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EDWARD HERBERT.

# REPORTS

AND Ph. 2.5

# CASES

OF

# LAW

Argued and Adjudged in the

## Courts at Westminster,

In the Times of the Late

### QUEEN ELIZABETH,

AND

### KING JAMES.

In Four Parts.

The Second Impreffion, carefully Corrected, with the Addition of Many. Thouland of Beferences, never before Printed.

Collected by a Learned Professor of the LAW, WILLIAM LEONARD, Esquire, Then of the Honourable Society of GRAYS-INN.

Published by William Hughes of Grays-Inn, Esquire.

With Alphabetical TABLES of the Names of the Cases, and of the Matter contained in each Part.

LONDON,

Printed by William Rawlins, Samuel Roycroft, and Miles Flesher, Assigns of Richard and Edward Atkins, Esquires.

For H. Twyford, H. Herringman, I. Baffet, R. Chiswell, B. Griffin, C. Harper, T. Sawbridge, J. Place, and S. Keble, M DC LXXXVII.

# ETHOURIS

CASES



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Then of the Honourable Society of GRAYS-ING.

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## READER.

Courteous Reader, Hefe Cases were Collected and taken in the French Tongue, by William Leonard Efquire, fometimes of the Honourable Society of Grays-Inn; a Learned Professor and Practiser of the Common Law, in the time of the Reign of the late Queen Elizabeth: One Copy of some of these Cases (many years past) came into the hands of Sir Robert Hitcham Knight, afterwards Serjeant at Law; Another Copy of other of these Cases came then into the hands of Humphry Davenport Serjeant at Law; afterwards Sir Humpry Davenport Knight late Lord chief Baron of the Court of Exchequer; Both which faid learned persons approved of them, and made use of them in the course of their several Practice. Some other Copies of some of these Cases are now dispersed abroad, and are in the hands of divers Practifers and Students of the Law. who make the like use of them. The Originals themselves of all these Cases (amongst many others of the faid Mr. Leonards collecting) all of them under his own hand-writing, are now in my hands, having been delivered to me by a worthy Gent of the faid Society of Grays-Inn, who had them out of the Library, fomtimes belonging to the faid Mr. Leonard. These Cases having been lately, truly and carefully Translated by me out of the Original French Copy into English, have fince the Translation thereof, been perused and approved of by many Eminent Profesors of the Law. Wherefore I finding that the same do contain many excellent Matters and Points of Law, which have not heretofore been Printed, or published, do here offer the same unto thy Judgment upon a serious consideration, hoping they may be of some use and benefit to thee, in the like course of thy study and practice of LAW.

From my Study at Grays-Inn, Novemb. 20th. 1658.

Will. Hughes.

The Names of the Learned Lawyers, Serjeants at Law, and Judges of the several Courts at West-minster, who argued the cases, and were Judges of the several Courts, where the Cases were argued viz.

A Nderson, Lord Chief Justice of the Common Pleas.

Anger.
Althum, afterwards one of the Barons of the Exchequer.
Askinfon.

Ayliffe, Justice of the Kings Bench.

Clench, after Lord Chief Justice of the Clench, one of the Judges of the Kings

Cooper, Serjeant at Law. 1 Clark, Baron of the Exchequer.

Daniel, Serjeant at Law, after Judge of the Common Pleas.

Drew, Serjeant at Law.

Dyer, Lord Chief Justice of the Common

E. E. Gerson, Solicitor of the Queen, after Lord Chancellor.

F. Leetwood, Serjeant at Law, Recorder of London.

Fenner, Serjeant at Law, after Judge of the Kings Bench.

Golding, Serjeant at Law.
Glanvile, Serjeant at Law, after Judge of the Common Pleas.
Gent, Baron of the Exchequer.
Godfrey.

H.

Hammon, Serjeant at Law, after Judge of the Common Pleas.

Harris, Serjeant at Law. Heale, Serjeant at Law. Hobart.

K. Ingsmil, Judge of the Kings Bench.

T Aiton.

M. Ead, Serjeant at Law, after Judge of the Common Pleas.

Manwood, Lurd Chief Baron of the Exchequer.

Mounson, Justice of the Common Pleas.

Owen, Serjeant at Law, after Baron of the Exchequer.

Popham, Attorney General of the Queen, after Lord Chief Justice of B. R.

Periam, Judge of the Common Pleas.
Pepper, Attorney of the Court of Wards.
Plouvden.

Puckering, the Queens Serjeant at Law.

R Hodes, Judge of the Common Pleas.

Shuit, Judge of the Kinge Bench.
Shuitleworth, Serjeant at Law.

Tanfield, Serjeant at law, after Lord Chief Baron of the Exchequer. Topbam.

Windbam, Judge of the Common Pleas.

Walmesley, Serjeant at Law, after Judge of the Common Pleas.

Y Elverton, Serjeant at Law, after Judge of the Kings Bench.

Burchets cale

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# REPOR

## Cases of

Argued and Adjudged in the Time of Queen Elizabeth, From the twenty fourth to the three and thirtieth year of Her Reign

Hill. 25. Fire in the Lings D

Hill 25. Eliz. in the Kings Bench.

I. Borneford and Packingtons Cafe.

II Crespas, It was found by special verdict, Chat the De-Custom of sendant was seised of the Manoz of B. whereof the place Free-Bench where is parcel, demised and demised by Copp, &c. And that B the Dianfather of the Plaintis was feised of the place where, &c. according to the custom of the said Manoz, in fee-simple, and that within the said Manoz there is this Custom. That if any Copp-bolder vieth seised, his salife over-stoing him shall hold all the Land during her Windundsood as free-bench, and shall be admitted Cenant to the Logo, and that the Detr shall not be admitted to it during the life of his Mother: And sound also another Custom within the said Manoz. Chat if any Copp-bolder be convicted of felong, and the same be presented by the Homage, that then the Logo might seize, &c. And it was surther sound. Homage, that then the Lord might feize, see. And it was further for that the Grandfather of the Plaintiff cook a Chife, and vied to having line A. Father of the Plaintiff. The Chiffe is admitted bet free-bench, A is considered of felony, and that is preferred the Pomage; and atcerdates A view, after which the Wife viet It was acqued by Atkinson, that A is not within the danger of Custom, to during the life of his Abother, who has a Claim Cenant to the Lord, and admitted to it, he is Copy, holder has not like to the Case lately admitted of possible frame, without mittance, for there the party was admittable, and so he was not like to appearet by the Custom as it is sound. Chat the upon such matter hall seize, and therefore we much to make reaction that this Cultom both not extend to Cales where the Lago cannot leize by reaction to leize but in the And and the Lood cannot leize by reaction of leize but in the And and property of the Cultom before the Cultom was aught at the conceived, but it holds be a Cultom beyond the Cultom in adopt it is conceived, but it holds be taken articlely, and not be lump for the Cultopacity a Cultom in the taken articlely, and not be lump for long all this afterwards and more large and a Seilver. But morning all this afterwards are likely went was given against the Plaintiff account of this large against the Barrier was given against the Plaintiff account the like against the Barrier was given against at an analysis of the second and the Hill and the community and a second against the Barrier was given against the Hill and the community of a Second and the Hill and the community and against the Barrier was given by the Hill and the community and against the Barrier was given by the Hill and the community and and the

Hill. 25 Eliz in the Kings Bench.

A Copy-hower both director to the use of one A upor trust, that he shall how the laid Land until he hath lebyed certain monies, and that afterwards he shall surrender to the use of B, the monies are sebyed, A. is required to make surrender to the use of B, he refuseth, B, exhibits a Bill to the Loyd of the Mannoz against the said A who upon hearing of the Cause decrees against A that he shall surrender; he resuseth, now the Loyd may seize, and admit B to the Copy hold, for he in such Care is Chancelloz in his own Court, per totage Curiam.

Hill. 25. Eliz. in the Kings Bench.

III. Wade and Bemboes Cafe.

In the Court of the City of Brikol, the Calewas, That Bembo was plaintiff in the faid Court against Wade in an Action of Covenant, and declared of a Covenant made by word by the Cestator of Wade with Bembo; and declared also, that within the said City there is a Cussom, That Conventionre tenus sacka, shall bind the Covenantor as strongly as if it were made by writing: And strong so the Court, that that Cussom doth not warrant this Action, sor the Covenant binds by the Cussom the Covenantor, but both not extend to his Executors, and a Cussom shall be taken strictly, and therefore the Judgment was reversed.

25 Pafch. 25. Eliz. in the Kings Bench,

IV. The Lord Paget and Sir Walter Ashtons Cafe.

The Noid Pager drought an Anton of Crelpals against Sir Walter Altronius instituted because beis seised of three Deslinages to him and his ineres, and that he and all those whole estate he bath, so have had the Woodwardship of the Forrest of C. within which, the place where, so and also have had within the safe Forrest Estades without number: And that one Rowland Bishop of Covenry and Lichfield was seised of the Forrest asociald in the right of his Gourch, and by Indenture betwirt him and Die Edw. Altron his Ancesso, whose peer he is, setting forth that divers bedates had been betwirt the said parties concerning some profits within the last Forrest; It was agreed betwirt them, that the said Sir Ed. Altron should release unto the said Rowland statemy that the last Direct and Estades, and that the said Rowland states grant de novolunto the said Edw. and his Deles the said Rowland should grant de novolunto the said Edw. and his Deles the said Rowland should grant de novolunto the said Edw. and his Deles the said Rowland should grant de novolunto the said Edw. and his Deles the said Rowland should should end Edatecophing to the said Deles the said Forrest and one hundred loads of Edwoers per annum out of the last Forrest as the said Sishop wis specially said to the said Sishop wis specially said to the said Sishop wis special said Sishop said for the said Discount by alliament of the Officers of the said Forrest, and abserced, should cut bow whood subord should should said for the things granted estimated for his matter the Plaintist oid demure in Naw, and it was adjuded so the state officers should cut only an Interest so his own life; so the grant was to Sis Ed. only without the word, heirs, and the testence to the Indentures, by which the Bishop hath covenanted to grant the Inheritance, though which the Bishop hath covenanted to grant the Inheritance,

1. Inft. 148. 2. 398. b. ib. Dy. 253. 1 Cro. 644. & hered forum, and that in default of Affigument it hould be lawful for Sir Ed and bis Deirs, thall not supply the defect of the ingres in the grant

Mich. 25 and 26 Bliz. in the Kings Bench. 28 11 21 100

V. Gilbert and Sir George Harts Cafe.

Cilbert brought Debt upon Escape against Dir George Hart Sherist of Kent, and declared, That he recovered a certain debt against L. Escape who was taken in Execution, &c. And the Case was, That the sale A 1. Cro. 184-12 was taken in Execution in the time of the old Sherist, and escaped also then: and after wards the Defendant being Sherist, the Plaintist against shed a Scire sacias against the sale A upon the Judgment aforesaid, upon which Execution was awarded by default, and thereupon issued a Capias ad satisfaciendum, by which A was taken, and escaped: And by the decimal he charges 2710 of sales I pinion of all the Justices, the Defendant in this Case thall be charged; for notwithstanding that A. was once in Execution, which was determined by escape in the time of the old Sherist, pet when Execution was now awarded against him upon his default in the Scire sacias, the same shall bind the Sherist out of whose custody he escaped.

> Mich. 25 and 26 Eliz. in the Common Pleas. VI. Moor and Farrands Case.

More lealed Lands to Farrand upon condition that he, his crecutors 1. Crs. 26.

Og Assigns should not alien without the leave of the lesso; Farrand Condition bed intestate, his Calife took Letters of Administration, and alterest where shall without leave, and by Periam Justice, she is not within the penalty of the Condition, so the Administrator is not meerly in by the party, but by the Didinary: And by Meade and Beriam, If a Lease so years upon such they a Condition be extended upon a Recognisance, the same is not an alienation 1 Cro. 26. 757 against the Condition. But if seme lesse so years upon such Condition by Land 67. Land 67. Land 67. Land 67. Land 67. Land 69. L with the Land.

teng of

Mich. 25 and 26 Eliz in the Exechequer. HA BUSTONIA VIL Maynyes Cafe.

ATA DO . A

A . 23

Mayney sessed of Lands in Fee, took a Misse, made a Fediment to co. 1. Ink 41.2.

Ma stranger, committee the reason, and thereof is attained, and harb a Charter of Pardon and dieth. It was maded by Plowden in the Erche. quer, if the Wise of Mayney shall have Dower against the Fedise: Mahowood Chief Baron, by reason of this Attainder Dower cannot accrue to the Wise per title begins by the Enter marriage, and ought to continue and be consummated by the death of the Dusband which cannot be in this Case so the Attainder of the Dusband hard interrupted it, as in the Case of Clopement: And this Attainder is an universal Choppel, as in the Case of Clopement: And this Attainder is an universal Choppel, where an whom the Elebeat belongs, but every stranger may har her of Escopel, bet Dower by reason thereof; so by the Attainder of her Dusband the Wise Wisabled to demand Dower as well as to demand this Intheritance; and he cited the Resolution of all the Justices of England in the Case of the Lady Gate, 4 Ma. Dyer 140 and the Pardon doth not help the matter, so the same extends but to the Pardon doth not help the matter, so the same extends but to the

3 3 pr "

tife of the Offenber, but both not falte attup the Attainmer by topich the in baccen to Bemand Dower buring the line Attainmer in face t See the Statute of 5.E 6. cap. 11. Vid. Fitz. Dower 82. 13.E 3.8 E 3. Dower 106 Fitz. Utlag. 49.

#### 8 Mich. 25, and 26 Eliz. in the Exchequer.

4. Len.
117.
Leafes for
three lives of
Copy-hold
eftate are not
within Stat.
41. Eliz.

I have Exchequer it was found by special verbut. That the Evant Dians and Chappens Regular of Odery, were letted of the Hahe nozof O, &c. and that 22 H 7, at a Court holden there, granter the Lands in question to W. and W. his Son for their lives by Copy, according to the Cultom of the laid Hannor, and that afterwards 30 H 8. They leaded the Lands by Indontures to H. rendering the ancient and accustomed Rent, and afterward succendered their Colledge, &c. and afterward W. and W. byedt And if that Leafe so made during the tustomary estate for life, notwithstanding the Statute of 31 H 8 be god or not, was the Question, being within a year before the surrender, &c. It was argued by Egernon Sollicitor, that the laid Leafe is boid by the Statute; the words of which are sweetered or in the which any estate or inferest softerm of life, year, or years, at the time of the making of any such Leafe, had hig being or continuance, and was not then efface of inferest for term of life, year, or years, at the time of the making of any such Lease, had his being or continuance, and was not then betermined inished, or expired) and therefore we are to see, if that right or possession which whad at the time of the making of the Lease were an interest, or an estate for life: And as to this word (estate) it is nothing else than measure of time, for an estate in fee-simple is as bush as to say, an interest in the Lands sor ever, and the like of other a states, and therefore here we and what at the time of the making of this Lease an estate sor life in the ching benefit ? And although such customary Cenants are termed in Law Cenants at will, secundum Consecudinem Manerii, which Eustom waterasts his possession here sor his life, and therefore it is a more certain estate than an estate at will, sor the Copybolive may justife against his Lord, so cannot a cenant at will, whole estate is determined at the will and pleasure of his Lesso; sub although this estate is but by Custom, and by no Condensate the state is railed; it is as material, so as it be an estate and this estate being supported by Custom is known in Law an estate and this estate being supported by Custom is known in Law an estate and this effate being supported by Culton is known in Law an efface and to accounted in Law; and the Law hath notably distinguished Copy hold Tenancies by Custom, and Tenancies at will by the Common Law; for a Copy holder thall be fealty, hall have aid of his Lozd in an Action of Trespals, shall have and maintain an Action of Trespals against his Lozd, his centre than be indowed, the busband Trespals against his Lord, his cense han be indowed, the busband shall be Tenant by the Curtesse without new admittance: and it was admidged in the Common Pleas, 8. Els. That if a Copy holder the render to the use of another so pears, the Lesse viets, his Crecutors shall have the resone of the Cerm without any admittance, M. and 13. Eliz a Copy holder made a Lease so; years by Indenture marranted by the Lustom, it was objected, that it it were so, then if the Plaintist outh recover, he chould have Habers schappseissonem; and then Copy holder for life, the Lord grants a Kent-charge out of the Mannor, whereof the Copy holder darbases kent-charge out of the Mannor, whereof the Copy holder decorbingly, he hall not sufficiently be not the use of A who is admitted accordingly, he hall not sufficiently and the Lord grants are charged, but if the Copy holder dieth so that his estate is betechnived, and the Lord granteth to a stranger de novo to hold the land Lands by Copy, this new Cenant shall hot the Land charged: and so mas it tated and adjudged in the Common Pleas. It was adjoined.

Copy-holde m Interest.

Poft 16

Mith. 25. & 26 Eliz, in the Rings Bench,

IX. The Lord Pages and the Bishop of Covenerwand Leichstelds Case.

IX. The Lord Pages and the Bishop of Covenery and Leichseld Was envired of Exception and Endistment.

In the County of Stafford, of breaking and entring of the Ciose of Thomas Lovd Pages, called the Vinexard; the Dishop tradected the End-challenge distinct, and at the day of appearance of the Live, the Vishop challenge the Array, because that he being a Beet of Variannent, no unight was returned, as Cipon which challenge the Lineaus Counterly in demart in Law, but at last, for expedition, as the Court belificered to the Councel of the Bishop, a Bish sealed to save him the abbountage of the last challenge: Any the Councel was taken, de beneated, buy found, that one A. by the Commandment of the Bishop entred into the saw Close called the Vineyard, being then in the occupation of one B. at will, of the safe Lord Pages, and his the Trespass, viz. digged a Curst these, and there left it, and so beparted. The matter of challenge was many times argued, and it was argued against the tion of some B at with, of the lato Lord Pager, and bit the Crebalis, viz. digged a Curfl thete, and there left it, and to beparted. The matter of challenge we came that the ting is party, and it was argued against the fails challenge we came that the ting is party, against whom no Lord of Parliament shall have such Presogative. To which it was answered on the other side, that so much the rather the challenge lyeth in the Case, so, where a Peer of the Parliament is to be treed upon an Endaument of Creason of Friany, it shall be per pares; if upon appeal of Durber, or felong by vivinary treat, het 13.48 B. Creat 42 and Br. Enques, 49. It was salt on the Parantiss side, that here the Bishop is goodan modo, any the Vedice scial side of his som foute; But by Gagody Justice, the Vedice scial in this Case is reputed in Law, the Dure of the Alucen, notivitylaming that the party envired to his expedition, both pay the Fees so; the Parcets, for that the Ciarks of the Court have encroached so! their gain, so; otherwise there should be none paid by the Euren; and by the better opinion of the Court, the Court have encroached so! their gain, so; otherwise there should be none paid by the Claum Domini Pager; and it appeareth by the Creatis, the Challenge was bolten good. Another matter was indued, because the Challenge was bolten good. Another matter was indued, because the Challenge was bolten good. Another matter was indued, because the Challenge was bolten good. Another matter was indued, because the Challenge was bolten good. Another matter was indued, by the Creatis, the Challenge was bolten good. Another matter was indued, by the Creatis, that the soul of the Lord Pager. In the Lord Pager cannot have an Action of Erepass against the fait Shoop, of the said A upon the matter; and by Wray, the Lord Pager and of peth, 19 H.6. The Crepass, 36. But here the Emblandment is, that our Fernice by the commandment heart of the Bishop, upon which matters but for diagram the the Canda. Another exercise in any take it was and the Cr

Mich. 25 & 26 Eliz. in the Kings Bench.

X. Stonley, and Bracebridges Cafe.

In Ejestione firms, hp Stooley against Bracebridge, the case was, Thomas pl. Com. 417.

Bracebridge father of the Defendant was lessed of the Pannoz of 412.

Kongebuny, to him and to the heirs wales of his boup, and 3. H. 8. Lease a fiteld called Scalling, partell of the said Dannoz, to Tho. Coke for years, and afterwards, 4 E. 6. Leased the said field (the first Lease he ears, and afterwards, 4 E. 6. Leased the said field (the first Lease he ears).

ing in effe) to Sir Geo. Griffith for febenty years, who affigned the fame to A. Bracebridge Brother of the Leffor, and to Joyce Wife of the Leffor, and to A. Bracebridge Brothet of the Lenoz, and to joyce come of the Lenoz, and afterwards, 5 E 6, the law Thombracebridge, the Lenoz, by his Deed Invented, gave the law Hannoz to the law Six George by these words (dead, concess, hand pay to the law Thomas Bracebridge, within fifteen pays after, ten hundred pounds, and if he fast of payment thereof, that then after the said fifteen days, the said Six George should be sessed of the law Hannoz of the yearly value of three pounds (now of late in the occupation of Thomas Smith) to the use of the said Thomas Bracebridge, within fifteen days. Thomas Bracebridge for his life, and afterto the lato Dir George, tutil he had levied five hundred pounds for the payment of the debts, and the education of the children of the law Thomas Bracebridge, and after to the use of the Desendant in tail: And of the relidue of the law Han-nor, to the use of the law Tho. Bracebridge, and of the law Joyce his Chife sor their lives, &c. Tho. Bracebridge, made livery to the law Sit George, in one place parcet of the faid Mannoz, which was in his own occupation in the name of the whole Dannoz: the fifteen days incur without payment of the fato ten hundred pounds, the Indenture is enroled, Coke attorns, Joyce ayes, Tho Bracebridge grants the Lands to a stranger by fine, and before Proclamations, Thomas his Son and beir apparent, within age, enters in the name of the Feoffees by reason of the forfeitute, Proclamations are made, Tho. Bracebridge the father by eth, the Cerm of Coke expireth, A enters, and leafeth to the Plantiff, who enters, upon whom Tho. Bracebridge the Son enters, upon which Entry the Action is brought, it was argued by Beamount the effect: Although here in the Inventure of bargain and fate, there is not an expects consideration set vown in the common form of a consideration, pet because the consideration is implied in the condition, it is good enough (fee the Provito and condition, ut supra, that the said Sit George should pay, &c.) As if I bargain and sell to you my Land, Proviso that you pay to me for the same at such a day one hundred possible, that coninderation let down in the form of a condition is as effectual, as if it had been formally expressed in the usual Cerms . As to the fecond pap. ment, Where a man bargains and sells his Lands by Deed indented to be enroled, and before enrolment he makes Livery to the Bargainee, and afterwards the Indentur is enroled, the Court discharged Beamount from the arguing of that Point, for by Wray, the Livety both prevent the operation of the Encolment, and Sit George hall be accounted in by the Livery, and not by the bargain and fale; for Livery is of more worth, and more worthy ceremony to passessees, and there tore shall be preferred: and then the Livery being made in such part of the Mannor, which was in the possession of the Feosity in the name of the whole Bannoz, no moze of the Bannoz paffeth but that which was then in the possession of the Frostor: And the Reversion of such part of the Pannoz which was in Leak shall not pass without Attornment, but when the Enrolment comieth, now the whole passeth, and then the Reversion being setted by the Enrolment, the Attornment coming afterwards hath no relation: See 48 E 3.15, 16. The Jury here have found the default of payment, whereby the conditional like which passed by the hargain and sale, upon the condition backen, shall be requested. by the bargain and fale, upon the condition by oken, shall be reduced to the Bargain of without any Entry, and then the uses limited after are void, for an use limited upon an use cannot rise; quod fuit concession per totam curiam: Then Bracebridge the Father, having the Inheritance of the said Hannor in his own right, and the interest de source for years in the right of his chife joyntly with the said a. when he sells the said Hannor by Deed indented and encoded now thereby the interest sor years which he hath in the Right of his chife both not pals, sor a bargain and fale is not to frong a conveyance as a Livery. As if I have a Rentcharge in the right of my Wife, out of the Manoz of D. which Manoz

Livery, where it prevents operation of an Enrolment.

1. Cro. 382.

afterwards J purchase, and afterwards by Deed indented and entoled, I bargam and sell the said Band, so the Rent shall not pass. Then the said Thomas Bracebridge the Father having the said Right of an entail to him and to the Peter Bales of his body, and being Tenant soy life, by his own conveyance, the Remainder in tail to his Son and Deir apparent, the now Defendant, when he ledgeth a fine, and the Son enters soy soyseiture before Proclamations pass, and his father dyeth, in that case the Defendant is not remitted unto the first entail, although after Proclamations pass in the life of the Father, and so he shall not about the Leases; soy norwithstanding that the Issue in tail by that Entry hath defeated the possession which passed by the Fine, yet as to the right of the old entail, the Fine both retain its soze, and so he entred, quodam modo, in allurance of the Fine: As it Tenant in tail doth discontinue and diffesses the Discontinuee, and levieth a Fine with Proclamations, and the Discontinuee enters within the side years, now although the Fine as to the Discontinuee he about the five years, now although the fine as to the Discontinuee be abouted, so as the possession which passed by the fine is defeated, yet the right of the entail both continue bound: Egerton Solicitoz contrary: and he conceived, that all the Pannoz both pass by the Livery to Sir George, and nothing of it by the Enrolment, and that the meaning of the parties was, that all should pass by the Livery, for if the assurance should enure by the bargain and tale, then the second uses limited upon default of payment, should never rise; for an use upon anuse cannot rise, and then the law uses limited for the payment of the vebts of the Feoffor, &c. hould be defeated; and also where at the beginning of the alfurance, the condition was entire, the warranty entire, &c. and if fuch confirmation floud be allowed, here shall be a divided condition, a divided warranty: And also the meaning of the parties that the whole wannot thould pals, by luch confiruction thould be vilmembred, and part pals by the Livery, and part by the bargain and fale, and we ought to make the Arbery, and part by the bargain and fale, and we ought to make such constructions of Deeds, that things may pals by them according to the meanings of the parties; as if I beleised of Aganno; to which an Advowlon is appendant, and I make a Deed of Feofiment of the same Aganno; cum pertinencis, and deliver the Deed to the party, but no Arbery of leisin is had, the Advowlon shall not pals, for then it should be ingross, whereas the meaning of the parties was, that it should pass as appendant, and that in such case cannot be, for there is no Livery, therefore it shall not pals at all, and so it hath been adjudged: So if I bargain and sell my Aganno; of Dand all the Crees in the same, and I deliver the Deed, but it is not enrolled, the Crees shall not pass, so the intent of the parties was, that the Crees should pals, as parcel of the Free-hold and not as Chattels and as to the remitter, I concel of the Free hold and not as Chattels And as to the remitter, I conceive, that the veir entring as Peir, by the Law is remitted, but where the Entry is given by a special Statute, there the Entry hall not enure further than the words of the Statute; As Land is given to the Dusband and Wife, and to the Peirs of the body of the Lusband, the Pusband levieth a Fine and dieth, the wife entreth, this Entry Phall not avail to the idue in tail, for the Entry is given to the Wife by a special Law: And he cited Six Richard Haddons Case, the Pusband altened the Lands of his Wife, they are divorced, the Pusband vieth, the Wife Mall not enter by 32.44.8 but is put to her Wife of Cui in virtues of the Annual Case. And afterwards the same Asm the Rusics had not enter by 32.44.8 but is put to her Wife of Cui in virtues of the Annual Case. ante divor. And afterwards the same Term the Justices having considered of the Case, delivered their opinions upon the matters by Wray chief Justice, viz. That the one movety of the Lease was extinct by the Utvery, viz. the movety of loyee the Casse of the Lesso; and as to the other movety it is in being, so, here is no remitter; so, if any remitter; had been in the Case, it should be after the use raised, which is not as yet raised, so, the Land aught to remain in Sir George until the said five hundred pounds be levyed, and that is not focord by the Clerdic, and therefore so, the said movety, the Washiff had Judgment and therefore for the faid moyety, the Plaintiff had Judgment.

#### Mich 25 & 26 Eliz. in the Exchequer.

XI. Treshams Case.

2 Len. 55, 56. E

Fine for Alienation without Licence.

Entry for Condition, what acts it Mill defeat.

Condition shall not avoid an Interest vested.

SIR John Tresham seised of the Manot of D. holden of the Ming in Capite by knights service, 4 H. 7. enseased Edmund Earl of Wilts and N. Vaux knight, who gave the said Banoz to the said Sir John in tall, upon condition that he should not alien, &c. quo minus, &c. John Tresham dyed seised, by whose decease the Banoz descended to Tho. Tresham, who entred, and 18 H. 8. aliened with licence, by recovery, &c. N. Vaux the surviving feosses died, having issue W. Lozd Vaux; the purchasoz died seised, his Son and Detr 14 Eliz. septed a Fine Sur Conusans de droit, &c. and that fine was sevied to the use of the Conusee, &c. and that without significance: The Lozd Vaux after the fine levien. out licence: The Logo Vauxowithin five years after the fine levied, entred for the condition broken: and now issued forth a Scire facias a. gainst the Conuse for that alienation without licence, who made default, whereupon issued process to seize the Lands; whereupon camped it Tho. Tresham, and shewed the whole matter aforesaid, and prayed to be discharged. It was said, that this Prerogative to have a fine for alienation without licence, had lately beginning upon the original creation of Seignorics. So as this prerogative is as it were paramount. creation of Seignozies, to as this precogative is as it were paramount the Seignozy, and thail go paramount the Condition, as well as the Condition is paramount the Alienation, but if the diffeilor of the Cenant of the King maketh a Frostment in Fee, now upon the entry of the disteilee, the person of the Feoslee shall be charged with a fine, but the Land by the re-entry of the disseilee is discharged: and such is the prision of the Lord French in his Reading upon the Statute of Presentation of the Lord French in his Reading upon the Statute of Presentation of the Lord French in his Reading upon the Statute of Presentation of the Lord French in his Reading upon the Statute of Presentation of the Lord French in his Reading upon the Statute of Presentation of the Lord French in his Reading upon the Statute of Presentation of the Lord French in his Reading upon the Statute of Presentation of the Lord French in his Reading upon the Statute of Presentation of the Lord French in his statute of Presentation of the Lord French in his statute of Presentation of the Lord French in his statute of Presentation of the Lord French in his statute of Presentation of the Lord French in his statute of Presentation of the Lord French in his statute of Presentation in his opinion of the Lord Frowick, in his Reading upon the Statute of Preregativa Regis, and the reason is, because the diffeilor is not Cenant to the sing, and so when he aliens, it cannot be said an Alienation by the sings Tenant. See 45 E.3.6. If the Cenant of the King in chief leafeth for life with licence, and afterwards grants the Reversion over without licence, the Cenant for life is not bound to atturn in a Quid juris clamar; wherfore it feems, that if such Cenant both attorn, the King shall seize presently. This Entry sor the Condition broken is not to have so violent a retrospect to the first livery to which the Condition was annearly, that it shall before all things mean between the Treation annexed, that it hall defeat all things mean between the Creation and the breach of the Condition, but it shall defeat all mean things which rise upon the act of the party, as Kent, Dower, &c. But charges which accrue by reason of Tenure, do remain, notwith standing the Entry for the Condition broken: As if such a Tenant of the King matery for the Condition broken: keth a feofiment in fee upon condition, which is broken, the feoffee dieth leised, his veir of full age, the Feotog re-entereth, this re-entry by force of the condition broken hath not so avoided the velcent, but the king shall have Relief upon the said velcent, for the Relief is paromount the Livery, and the condition. So if a Feotice upon condition distains in Avoway, by which the Lord brings a White the condition bistainer, and hath Judgment; the Feotice entreth for the condition broken, the fall re-entry shall not about the interest of the Lord by the broken, the faid re-entry half not avoid the interest of the Lord by the Judgment on the colori of Disclaimer, but he may enter at his pleadure; and it was moved by Plowden who argued for Tresham, that if the Tenant of the King, being Non Compos menis, makes a feofiment in Fee, and dieth, his deir entring upon the Feoffee hall not pay a fine toy the Alienation of his father, but the person of the father shall be charged with it. And at the end of this Term, after many Arguments and Aportions, Judgment was given for the Queen, that the should be the father the live of the father should be the father the father for leize the Land and polo the same for the Fine, and that the thould not be driven to sue the person of the Feoffee or Conusee: And by Manwood chief Baron, at the Common Law in many Panors, Cenant in foccage

foccage upon every alienation thall pay a fine, nomine relevii, a fortiori, in the Kings cale, and therefore he was of opinion, That this Preroga-tive to have a fine for alienation without licence is by the common kaw, and not by any Statute.

Mich. 25 and 26 Eliz. in the Exchequer Chamber.

XII. Caters Cafe.

A Bill of Intrusion was in the Erchequer against Carer, who plead Intrusion.

ed the Stant of the Queen, the Plaintist replicando said, that he 7 Co. 12.

tive the Queen had any thing, &c. Sir Francis Englesield was seised of the 1 Anders.

95.]

Asance, of which, &c. and he being beyond the Seas, the Queen sent her Letters under the Privy Deal, Quod ipse in side, & legeantiqua dicta Regina tenebatur, indirecte rediret in Angliam, pradict, tamen Franciscus (spretis mandatis dict. Regina) venire recusavit, for which a Certificate was by the saturation into the Chancery, Quod dictus Franciscus in portibus transfinarius sine licentia dict. Regina remansit: Another eupon a Commission was awarded to feize the Lands of the faid Sir Francis, which was entred in the Replication in has verba, reciting allo the Queens Privy Seal, and that the faid Sir Francis viv Seal, and that the faid Sir Francis viv Heart there (spreis mandatis, &c.) for which the Queen seiled and granted to the Plaintiff: And afterwards the Statutes of 13 and 14. Eliz, were made: after which the said grant was made to the Defendant, upon which matter there was a Demurrer and Judgment given for the Plaintiff, And now Cater brought a Writ of Error in the Error quer Chamber, and it was first affigned for Error, because that the Record is entred Inter Johannem Cater present, his in Curia by I.S. Antornatum soum, and that cannot be, for it is oppositum in chiefter, that one can be present in is entred inter solannem Cater present. his in Curia by I.S. Attornatum soum, and that cannot be, so; it is oppositum in objecto; that one can be present in Court and also by Attorney; simul & semel, so; the Attorney is to supply the default of the personal presence. To which it was said by Wray, Anderson and Periam, that the matter assigned mas no Error, so, there are many speciolents in the Erchequer of such Entries, which were openly shewed in Court. 48 E 3.10.R 2.20 H7.20 H 8. And by Manwood chief Baron it is not so ablued an Entry as it hath been objected, so, if one hath an Attorney of Aecord in the Kings Bench, and he himself is in the Mag-shalley, there is an Action against him, he is present as specient, and also by Attorney; and by them, notwithstanding that here appeareth a contractery, so, such Entry properly is (presented his in Curia in propria persona such yet because many proceedings are according, it is the more safe course to follow them, so, if this Judgment be reversed so, this cause, many Aecords should be also reversed, which should be bery perissons. An manp Records thould be also reversed, which thould be pery perillous: An other Erroz was alligned, because it is not alledged in the Keplication, of what date the Privy Seal was, northat any notice of the laid Privy Seal was given to Sit Francis; to which it was said, that the Privy Seal need not any date, especially in this case, for the matters which are unserted by the Privy Seal was taken to the Privy Seal of the matters which are unserted to the Privy Seal of the Matters which are unserted to the Privy Seal of the Matters which are unserted to the Privy Seal of the Matters which are unserted to the Privy Seal of the Matters which are unserted to the Privy Seal of the Matters which are unserted to the Privy Seal of the Matters which was said to the Privy Seal of the Matters which was said to the Privy Seal of the Matters which was said to the Privy Seal was sai der the Privy Seal are not issuable. See 2 Eliz. Dyer. 177. not any traderse Privy Seal. can be taken to it; and this Privy Seal is not as other Writs and Præcipes are, returnable in any Court, but the Queen her self from whom originally it came shall receive it, and also the Pestage upon it, and she her self in such case is Judge of the contempt, and no Accord of that Privy Seal both remain in any Court, but the Queen her self shall keep it, and then when the Queen is informed of the contempt, the makes a Marrant fountimes to the Chancellog to award a Commission. sometimes to the Creaturer and Barons of the Erchequer to the same purpose to seize the Lands, and that Marrant is signed, with the Seal manual of the Queen, and the Queen may certifie, and set down the cause of such leizure in luch Warrant, and no other Certificate is made by the Queen; and the Queen may certify the same Commission by word of mouth, and if the other party will say that the Queen hath not certified it, he shall be concluded by the commission which is under the great Seal; and dis

Fugitives.

Dy. 375 b.

vers Privents were shewed openly in Court to that estex. And all the matter asociato, was agreed by the Chancelloz, Treasurer, and the said Justices, and no certificate at all needs to be in the Case, and then a superfluous Certificate being nought, shall not burt: for Rugation is surplusage. Another matter was to consider, what interest the Queen bath in the Lands of Fugitives by the common Law; And as to that they were all clear of opinion, that the Queen in such case as asociato may seize, and assign her interest over: And that such Assignees may grant Copy holds, parcel of the Danoz assigned, which grants shall bind him who cometh in after, cum manus Domini regis amoventurating also when the Statutes of 13 and 14 Eliz. come the Statutes do not assend the statutes of 13 and 14 Eliz. come the Statutes do not assend the estate of the Queen, but the estate of the Queen both continue as before, and all the Estates under it. And there was shewed unto the Court divers Presidents of seizures in such Cales, 18 E. 2. Edmond de Woodsock, Earl of Kent, went beyond Sea without Licence of the sting, and he went with Robert de Mortimer, and the king did certifie the same into the Chancery, reciting that he had sent his Privy Seal, &c. but that the saw Edmond (spretis mandatis nostris redire recusari) upon which issued a commission to seize, &c. and it was holden that the Queen babing seised he force of the common Law, and making a grant of a Copybold out of it, now when the Statutes of 13 & 14 Eliz are made, she hath not any estate thereby, so she had such interest before, and this new seisure after the Statutes works nothing, and nothing accrues to bet thereby, whereof she can make a seisure: For she bath beparted with the whole before, See 23 Eliz. Over 37 6. And note, that the grant of the Queen in the case at Bat was, quandiu in manibus nostris fore contigeric And afterwards Judgment was given, that judicium predictum in omnibus assirmetur.

#### Ter. Mich. 25 & 26 Eliz. in the Common Pleas. XIII. Sutton, and Dowfes Cafe.

Sutton, Clicar of Longstoke, Libelled against Dowse in the spiritual Court, and shewed in his Libel, that upon the Erection and Enveniment of his Clicaridge, sour quarters of Commercializated to the Clicar out of the Granary of the Prior of B. of the Cithes of the Parson of Longstoke, and that the Parson of Fermor of the said Rectory of Longstoke, had always paid the said sour Quarters of Com to the said Clicar and all his Predecesson, and alledged further, that the Lord Sands was seised of the said Rectory, and seased the Barn and Cithe Com parcel of the said Rectory, to the said Dowse, his Clife and Son, Habendum to Dowse sor Cerm of his life, the Remainder to the Clife son for life: And shewed surther, that the said Dowse had covenanted with the said Lord Sands, to render the said sour Quarters of Wheat to the Asiar and his Successors, upon which Dowse procured a Prohibition, and Suron waved a Consultation, and it was moved in stay of the Countitation that the Cicar had Libelled upon a Covenant wherein Dowse is tared to pay the said Count, and that is a say Citle, and beterminable by the Low of the Land, and not in the Ecclesiastical Court: But as to that the opinion of the Court was, that the Libel is not grounded upon the covenant, as the sole Citie to the said Corn against Dowse, but upon the Endowment of the Clicaridge, and the Leased which Dowse is become Fermor of the Rectory. Another matter wasmoved, because that upon the Libel it appeareth, that the Lease asocials made by the Lord Sands was made to Dowse his Clife, and his Son, joyntly, in the Premisson, Habendum us supra, in which case it was

objected, that Dowle his Wife, and his Son, are all three fermors of the faid Barn and Tithes joyntly in possession, against all whom Sur-

Tithes

ton ought to have Livelled, scand not against Dowse only, fol the Habendum hath not severed their estates which were sount before, and tota cu-Co. I last ria negavic, fol the Habendum hath severed the joynt estates limited by the 7% in the premisses, and hath distinguished it into Remainders, but if the Habendum had been Habendum successive, the estate had remained joynt: Another matter was moved, because it appearet upon the Libel, that the Barton, of Fermor of the said Recorp ought to pay to the Clicar the said Com, and also it appeareth upon the matter that Dowse is not Parlan, nor fermor of the said Recorp, for the Lord Sands had leased to Dowse and his Bon, only the Barn and the Cith Corn parcel of the said Recorp; so as Dowse is fermor but of parcel of the Recorp, and the result of the Recorp doth remain in the Lord Sands, in which the said Successive to have Libelled against the Lord Sands, and Dowse, and not against Dowse only. And so that cause the Court, that if upon a Libel in the spirality of successive the Desendant makes a surmise in Banco to have a Prophibition, is such surmise be insufficient, the other party needeth not to demur upon it, and to have it entred upon Record, but as amicus Curiz, be shall shew the same to the Court, and the Court shall discharge him.

Mich. 25 & 26 Eliz. In the Kings Bench.

XIV. Punsany, and Leaders Case.

Osmond Punsary brought an Action upon the take against Leader, and declared, that one bedingsield was seised of the Panor of D. and Prescription that he and all those whose estate he bath in the sato Banor time out of so foldage. Mind have had Libertatem Faldagij & cursum Ovium, so the Cown of D. & Cown having any Lands within the sato Cown, so the sate of the sate Cown. having any Lands within the sate Cown, every second year left their Lands to live steel and untilled, and prescribed supper, that the Cenants of the Lands within the sate Cown might erect bereals in in their Lands, with the Licence of the Land of the sate Bedingskiel had set to him the sate Panor, and that the Descendant had execute verbals upon his Lands without Licence, so as the profit of his foldage is impaired by it: And all this matter was sound by second: And it was objected in say of Judgment, that the prescription is not good, so, it is against Lands: But the whole Court was clear of opinion, that the prescription is good enough, as 13 E.2. Prescription 51. Prescription to bade common appendant in other Land after that the pay is sut, and v.E.1. Prescription, 55. A seled of Lands may flow it and Sout it, and cut and carry away the Com, and afterwards when the Com, is carried, B by prescription may have the sate Lands is several, and the other who sowed it cannot meddle with that land, but to plow and low it in season, &c. And the Cattel cannot eat and pasture in the Land when they come to plow of sout, of to carry it away, not have any profit but the Com, and yet the Free-hold of the Land is in such person, &c. and that was holden a good Prescription, and adifference was taken by the Court, where one both prescription, and adifference was taken by the Court, where one both prescription, and adifference was taken by the Court, where one both prescription, and adifference was taken by the Court, where one both prescribe to take away the whole interest of the Owner of the Land, and where a particular profit is restrained: And bere this pr

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XVI. Mich:

#### XVI. Mich. 25 & 26 Eliz. at Serjeants Inn.

In the Dutchy Chamber, the case was, that king E 6. leased for years certain lands parcel of his Dutchy of Lancaster, rendzing rent, with clause of re-entry, and that a lease was made to one Bunny; It was found by Office that the Kent was arrear, and by another Office, that the Servant of the law Lessee, had tended the rent in his absence, and by the commandment of his Haster, and that afterwards one I.S. Acceiver General of the Dutchy, received the faid Ment, and had accounted for it, and upon his account it was allowed; And this matter was opened at Serjeants Inn in Fleet-street, before Wray, Anderson, Manwood, Clench, Rhodes, Plowden, and Standop; and it was argued by Shuttleworth, that in this case of cent reserved upon a Teale for years, made by the King of Dutchy. Land, the King is not bound to demand it, but he may for default of payment of it, re-enter without demand, and that the Leffee is tied to tender it at his peril, as well as if the Queen had been feifed of the faid land in the right of her Crown; and as to that payment, the Statute of 1 H 4. is to be considered, by which it is enacted, that the possessions of the said Dutchy Taliter, & tali modo, & per tales officiarios & ministros in omnibus remaneant, deducantur, & gubernentur sicut remanere, deduci, & guberneri debuissent, si ad culmen Regis Dignitatis assumption on these months of the said talents. fuiffemus, and thefe words ought to be intended of things which concern the Lands themselves, but this ac of demand is a personal thing, cern the Lands themlelves; but this ac of demand is a perional thing, and concerns the perion of the king, and toucheth the Majelly, and dignity of the king, and in all cales of the Dutchy the perion of the king shall hold his priviledge, notwithstanding that the possession of the Land be carried in the course of a private perion: And therefore if the Queen will alien Lands parcel of her Dutchy, she ought to make Livery, for now the meddles with the possession it self: but if the Queen will sue for parcel of her Dutchy, non omittes shall be in the Wift, for the cannot sue but as Queen, and the Queen hath such Pre-rogative, that none shall execute her salies at her own sute, but the Officer of the Crown, 21 E4. 60. for There, if it he not Land within Difficer of the Crown, 21 E4. 60. for Aivery, if it be not Anno within the County Palatine, and for the relidue, See 10 H47.3. Eliz.216,217. Plowden, Leffee for years of Lands of the Dutchy, thall have at of the King before Islue 10 years of Lands of the King make a Feofiment of Lands of his Dutchy out of the County Palatine, to hold of him in Capite, the Feofiee thall hold it so, and a Feofiment of Airly Lands upon condition that the Feoffee thall not alten is a good condition, and Langes thall not him the Dueen in case of an Airpointer. tion, and Laples thall not bind the Queen in cale of an Advoidor which the Queen hath in the right of the Dutchy, and if the Alliain of the Queen in the right of the Dutchy purchaleth Lands in Fee, and aliens, yet the Queen shall leife, and that bath been adjudged in the Erchequer Chamber; and if the Queen make a Leafe of fuch Land, and afterwards makes another Leafe of the fame Land without recttal of the first Lease, it hath been adjudged that the second Lease is void. It was argued contrary by Beamount the younger, that this condition which goeth to the realty, to reduce the Land again, ought to be ordered and governed by the Queen, as it ought to be by a Subject and therefore, if the Queen will take advantage of this condition, the ought to make a Letter of Attomey under the Dutchy Seal, to her own Officer, authorizing him thereby to make demand of the faid Kent, &c. And by Shurdeworth here be two Offices, the one contrary to the other, the best shall be taken for the Queen, 14 E45 in Skreens Case in the end of it: And if the Rent of the Kings Farmor be behind, now aithough that after the Accessor of the Dutchy doth receive it, yet the same both not purge the forfeiture, as if the Baylists of a Manor receive rent of a new feoffee, the same will not change the Abomy of the

The King not bound to demand Rent. Lord without notice given to him, 41 E 3. 26. And if a Copp-hold elicheat, the Steward without a special Watrant cannot grant it oper de novo.

Mich. 25 and 26 Eliz. in the Kings Bench.

XVI. Rearsbie and Rearsbies Cafe Intrat. Trinit. 25 Eliz. rot. 746.

Replevin by W. Rearsbie against A. Rearsbie, and L. Rearsbie, who about the distress, because that one W. Vavasour was seised of the Manor of Deniby, whereof the place where, scais parcel in his Demelhe as of Fee, and to letted gave the laid Manor to one L. Rearsbie Father of the Plaintiff, and of the Avowants and Janehis Wife, and to the Heirs of Lyonel, who by his Willil deviled unto A. Rearsbie a Kent of four pounds out of the laid Manor, with claule of diffrels, for his childs part, to be pearly paid, Lyonel the Father died 3 Eliz. and afterwards, 22 Eliz. Jane died, and for the arreatages of the laid Aent encurred mean between the death of Loynel and Jane his Wife,&c. upon which Abowry the Plaintiff did demurt in Taw, for the Aent hoth not hopfin in effect, but after the beath of the Wife of the Deviloz, for luch construction ought be made Construction of the Devile, as not to charge the Anheritance with the whole are of Devile. rearages, &c. and it was argued to the contrary, that the Defendant might well about the diffress for these arreatages; for if he in the Aesbertion upon a Lease for life grant a Aent charge after the death of the Scantor, the Grantee shall diffress for all the arreatages encursed after the grant, etiam, during the life of the Orantor, quod Curia conditions and it was said by the Council of the Avowant, that the Case at Bar is a stronger Cale, for this Aent, as it appeareth by the words of the Devile, was devised to the Avowant for his slivelshood, and for his children part, which words simply a present advancement, and these way has childs part, which words imply a prefent advancement, and these words pearly to be paid are frong a pregnant to that intent. It was adjourned.

XVII. Hill. 25 Eliz. in the Kings Bench.

be Carl of Northumberland brought bebt upon arreatages of Ac- Account. compt, the Defendant the wed that befoze the Accompt, the Plaintiff or vis own wrong vio imprison the Defendant, and affigued Auditors to him being in pilon, and to the Accompt was made by durels of impilonment: And the fame was holden a good Plea by all the Julices of both the Benches. And Judgment was given accordingly.

XVIII. Pasch. 26 Eliz. in the Kings Bench.

Pasch, 26. Elin

#### Forman and Bohans Cafe.

Replevin by Forman against Boban, the Defendant aboved for a stent Replevin.

Charge, and shewed, that one Wingfield was seised of the Manor of Wesham, whereof the place where, was parcel: And 33 H6. made a feosiment in Fee of the place where, &c. to one Orlow, rendring Kent and Sute at the Court of the said Manor, and that the said Wingfield was seised of the laid Kent and Sute, accordingly, and died thereof seised, and that the same descended to Anthony Wingfield as Son and Desc, &c. who is Cro. 39 was seised of the said Kent as parcel of the said Manor, and that the said Anthony, so seised of the said Manor and Kent, bargained and sold the said Manor and Kent, 26 H8. to Nicholas Bohan Father of the Adomiant, by these words; Mancrium de Wesham, & omnes omnimodos redditus, reputed, deemed, or adjudged part of parcel of the said Manor, who entred, and died seised and the same descended to the now Avowant, as Son and and died feifed and the fame befrended to the now Avowant, as Son and

beir,&c. and aberred, that the law Ment at the time of the bargain and lale afozelaid,& diu ante, was reputed parcel of the Manoz afozelaid: Apon which Avowy, the Plaintiff Did Demur in Law, and it was argued by Gawdy Serjeant for the Plaintiff, and be took an Exception to the Anowy, because the Abowant sheweth, that Authory Wingfield 26.H 8. hatgrained and sold the said Adams? to Bohan, Virtute Quar. bargaine & venditionis, & vigor.cujusdam Actus Parliamenti 27 H 8.de usibus, &c. the said Bohan was fessed, &c. where he ought to have said; by force of which bargain and sale the said Anthony Wingseld was seised of the said Ananor ascressio, to the use of the said Bohan, and that afterwards by reason of the said Statute of 27 H & the said Anthony then seised to the use ascressio, the said Bohan was seised in his Demelne as of feer for it might be for any thing appearing in the Avowry, that before the said Statute of 27 H & Anthony Wingseld had made a conveyance upon consideration to him who had not notice of the use, so as the use being suspended, when the Statute came, it could not be executed, for there was not any seisin to the use, and to that purpose he cited the Case of 7 H 7.3. where a gift of Trees by Cessus que use is pleaded, without alledging that the Feosfors were seised to the use of the Donor at the time of the gift: To that Exception it was answered by Popham Attorney General, Chatthere is a difference betwirt the Case at Bar, and the Case of 7 H 7. so, where a man entitles himself by Cessus que use, he ought to maintain such title by every necessary Circumstance, which the Law without expessing will not intend; but where a man alledgeth a matter, which is but a conveyance, there feffed, &c. where he ought to have fato; by force of which bargain and but where a man allebgeth a matter, which is but a conveyance, the needs no especial recital; as if a man will pretend the grant of a Reversion, and that the lesses for years did attorn, he needs not to their, that at the time of the Attornment the Grantor was lessed, &c. and he cited the Cale of 1.0 E.4.18. In Trespals, the Plaintist by way of Aeplication made to him a title, that A. was lessed and leased to him at Calif. by force of which the Plaintiff was possessed, until the Petendant did the Trespals, and Erception was taken to it, that the Plaintiff in his Replication had not averred, that A was alive at the time of Trespals, and it was not allowed, for the subsequent words (by force of which the Plaintiff was possessed until the Defendant did the Trespals) do a mount unto so much, for the Plaintist could not be possessed by force of the said Lease at Will if A. were not alive. So here, Bohan could not be here seised by force of the said Statute, if the seisin of the use which was raised by the bargain and sale had not continued until the coming of the said Statute: As to the matter in Law, Gawdy conceived that the averment in the perciole of the Avowey is contrary to the matter of the Avowey, for the creation of the Ment let forth in the Avowey proves, the Abowy, for the creation of the Ment let forth in the Abowy probes, that the Kent is not parcel of the Manoz, but a Kent in grols, and then the general averment, that the Kent is parcel of the Manoz, without thewing how, against the Special matter of the Abowy, is not receivable. And also nothing can be by reputation parcel of a Manoz which in rei veritate cannot be parcel of a Manoz, ergo, nor by reputation: Pophan contrary, That the averment is not contrary to the matter of the Abowy, for the matter disclosed in the Abowy probes, that it is not rei veriate parcel of the Manoz, but it both not exclude Reputation, and the Abetment both not extend ad veritatem sacki, which is set forth in the Abowy, but only to reputation, and so both sand conether well exposery, but only to reputation, and so both sand conether well expenses. Avoluzy, but only to reputation, and to both fland together well enough: And that a Kent charge may be parcel of a Panoz, lee 22 E 3.13.
31.E 3.23. In the Lord Tiptofis Cale, where it is ruled, that title made to a Kent charge as parcel of a Panoz is a good title, and the Affize a warded upon it, and in our Cale the Keputation is enforced by the fute

at the Court, which was also reserved upon the said feofiment toges ther with the said Rent, so as the intent of the parties to the Feofiment was, that this Rent so referved and accompanyed with the said

Averment.

: Cro. 746.

Reputation.

Rent charge parcel of a Mannor.

fute thall be effeemed a Rent fervice, and to parcel of the Manoz; and as to the continuance of Reputation it sufficeth, if at the time of the bargain and sale afozesato, which was 26 H 8. it was by many reputed parcel of the Manoz, and he cited the Case of the Marquels of Winchester: The King gave to his Ancestoz the Manoz of Dale and all lands then antea reputed parcel of the laid Manoz, and in a Bill of Intrusion against the late Marquels he pleaded the grant with averment, that the Land then ancea reputed parcel Manerii prædict. And because he did not shew certainly at what time the Land was reputed parcel of the Manoz, Judgment was given for the Queen; for it might be for any thing in his Plea, that the laid Land was reputed parcel of the laid Monoz before time of memozy, which Reputation would not ferve: but luch Reputation ought to be within time of memozy and understanding: he cited also the Case of the Earl of Leiceker. King Edward the firth seised of the Manoz of Clibery, of which a Wood was parcel, granted the said Monoz in Fee, which afterwards escheated to the Island granted the fait Wood in fee, which afterwards elcheated to the King for Creaton; Queen Mary granted the faid Wood to another in fee, who granted it to the now Queen, who granted the faid Banoz & omnes boscos modo vel ante hac cognit. Vel reputat. ut pars, membr. vel parcel. Maner. prædict to the Carl of Leicester, and it was resolved in the Erchequer, that by that grant the faid Wood Did pals to the Carland Judgment was given against the Queen, for it was part of the Banor in the time of E. 6. at which time (and hac) without the word (unquam) shall be extended by. 362 a ad quoddamcumque tempus præteritum. And Asputation needs not so ancient a Pedigree foz to establish it; foz general acceptance will produce reputation: As the house of the Lozd Creasurer now called Tibould was of late a private Manoz, but now hath a new name by which it is known, and that within thefe twenty years, which is not to long a time as we have alleged for our Aeputation, and would pals in a convey-ance by fuch name; to None-such. But as to Aeputation, I conceive that Reputation is not what this or what that man thinketh, but that Reputation. which many men have fait of thought, who have more reason to know quid. it; & quænam est inter illos reputatio, There was a Cale ruled in the Erchequer 13 Eliz. in a Bill of intrulion; the Cale was, that king Hen. 6. was feifed of a Manoz, to which a Weif was regardant, who purchased Lands, which the King feifed, and let by Copy as parcel of the said Panoz, and so continued until the time of E 6. who granted the same to Allice Hardwick, and all Lands, Tenements, reputed parcel of the faid Nonce; And it was adjudged, that the faid Land so purchased by the said Nest, and demised by Copy, did pass by the said grant to Hardwick. And afterwards, the same Cerm, the Justices, without any folemn Argument, shewed their opinions in the principal Cale, viz. That this Rent did not pals by the bargain and tale made as above, by Anthony Wingfield, to Bohan father of the Avowant; for here in the premisses of the Avowry is not any matter let forth importing Reputation, or by which it may appear that the Rent in question was ever reputed parcel of the said Manor, but rather to the contrary; and the bare averment of Aeputation in the conclusion of the Avoway is not inficient to induce Reputation. But if the Avowant had fet forth in his Abowey any special matter to induce the Court to conceive a Keputation upon the matter of the Avowey, as to shew that the Bayliss of the last Apanoe had always received the last Aent as parcel of faid Apanoe, and as Bayliss of the said Apanoe had accounted so; it, as parcel of the Panoz, and that the Lessess of the said Panoz had enjoyed the said Rent as parcel of the said Panoz, the same had been god matter to induce a Reputation, a to have incorporated the laid Rent with the fair aganot: and fo progment was given against the Avowant; and

of such opinion (as was affirmed by Wray) was Anderson, chief Justice of the Common Pleas, and Manwood, chief Baron of the Exchequer.

Pasch. 26 Eliz. in the Kings Bench.

XIX. Cham and Dovers Cafe.

Ejectione firmz.

Custom ad pasturandum, non ad colendum.

t. Cro. 469. Wells versus Partridge. Post 100.

2. Len 109.

Dower difcharged of a grant of Co. py-hold.

In an Ejectione firms, the Cale was, that one Michel was letted of the apanox of D. within which ofverte parcels of Land, part of the late Danoz, where customary Tenement's Demiled and Demilable by copy, 8cc. according to the Custom of the faid Manor for one, two or three lives, within which Manor there was a Custom, soil that the Lord of the Manor, for the time being, might grant Copy-hold estates for life in Reversion; The Lord granted such Lands for life by copy in possesfin Keverion; Che Log granted the fame Copy-hold to a stranger in Reversion for life, and vied, the Copy-holder in possession died, the Land demised by copy is (inter alia) assigned to the Chife for her Dower, who had Judgment to recover in a Christ of Dower, who entred and made a Lease thereof to the Defendant, who entred, against whom, the Lesse of the Copy-holder brought Ejectione sirms, and all this matter was found by Arrive, and surther sound, that every Copy-holder of the found by Aerdick, and further found, that every Copy-holder of the laid Manoz, might Leale his Copy-hold for a year, ad pasturandum, sed non ad colendum, and that the Leale made to the Plaintiff was for a year, ad pasturandum. Popham Attorny General, of Council with the Defendant, took exception to the Declaration, because the plaintiff had beclared a Teale at the common Law, and the Jury have found a Teale by the custom, which cannot stand together: And such a Cleroic both not maintain the Declaration, as if the Plaintiff had veclared upon a Leafe for pears of Lands, and the Aury found a debife for years, &c. but the exception was disallowed by the Court. As to the matter in Law he argued, that the Cenant in Dower thould hold the Land discharged of the Copy-hold for her life, and he put this cale. If the Aord of luch a Manor taketh a Wife, a Copy-holder for life dieth, the Lord grants a Rent-charge out of the customary land, and afterwards grants the laid land by copy for life, a dieth, the wife shall hold the land discharged of the Rent, but the Copy-holder thall be charged; and he put a difference where the Lord grants such Copy hold in possession, and where in Reversion, for in the first case the Wite thall hold charged, but contrary in the last: And he cited the Case of one Slowman, who being Lord of a Abanor (ur supra) by his Will devised, that his Executors should grant estates by Copy, and died having a Wife, the Executors make estates accordingly, the Wife in case of Dower shall about them: Plowden contr. the Tozd of such a Mannoz is bound by recognisance, and afterwards a Copy-holder foz life of the said Mannoz vieth, the Lozd grants his Copy-hold, de novo, the said new Grantee shall hold his Copy-hold discharged of the Aecognisance, which Gawdy Justice granted and hy Wray, if the Lozd of such a Danoz grants a Copy-hold foz three lives, a takes a Clife, the three lives end, the Lord enters and keeps the lands for a time, and afterwards grants them over again by copy, and dieth, the copy-holder shall hold the Land vischarged of the Dower, and this is a clear case, for the copy-holder is in by the custom which is paramount the title of Dower and the Seism of the Gustom is and by him in the case of the Eatl of Northumberland, 17 Eliz. Dyer 344. That the grant of a copy hold in Aeversion by the Eatl of Northumberland, both not make such an impediment as was intended in the condition there, for it is by the cultom, and not by the act of the party; And afterwards, the same Cerm Judgment was given for the Plaintist, that he and his Lessoz should hold the lands discharged of the Dower

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## Paseh. 26 Eliz. In the Kings Bench. XX. Fringe and Lewex Case.

Debt by Fringe against Lewes upon a Bond who pleaded, that the pelace condition was, that whereas the Defendant was Executor to one Morris degle, that if the Defendant house perform, observe, sulfil, and keep the Will of the kind Morris degle in all positis and Articles according to the true intent and meaning thereof, that then, soc. and pleaded nurther, that the laid Morris by the late Will bequeathed to the Pool of such a Count ten pounds, to be distributed amongst him, and also to the Education and that he had distributed the laid ten pounds, and that he had distributed the laid ten pounds to the Pool, and that he had distributed the laid ten pounds to the Pool, and that he had distributed the laid ten pounds to the Pool, and that he had better pounds to the Church waterens, and as to there is and always was ready to pay the same to the said I. S. if he had bemanded it, upon which there was a bemuitater the land as to the ten pounds to be distributed amongst the Pool, the same mas holden good enough without shewing, the names of the Pool, amongst whom the mony was distributed. In the pleading of the suff payment to the Church watvens was sufficient without name, ing of them, Dee 42 E 3 whee, 739. Soire sais out of a Recovery against Executors, and the strict was challenged, because it was Soire sais Executors, not naming their proper names; It was holden to be no exception, for Executors are as a composation known, in that they are Executors, the plea is well enough, for this Obligation (the Condition of which being general to perform the Well so, had maybe ready and pet is, the plea is well-enough, for this Obligation (the Condition of which being general to perform the Well so, had not altered the Poel in such manner as before upon request, and not at the petil of the Defendant. See 22 H 6.57.5 8. 11 E 4 10. 6 E 6.Br. Tender 60. And afterwards the same Cerm, the Court was cleat of opinion, and to cliwered the Courted the Courted on both sides; that in this case the Legacus are to be paid upon request, and

Pasch. 26 Eliz. In the Kings Bench. XXI. Sir John Smith, and Peazes Case.

Sir John Smith brought Debt upon an Obligation against Peaze, which pleaded, that the Bond was upon condition to perform covenants contained in an Indenture, and shewed what, and that he had performed them, the Plantist assigned the breach of one covenant, that where the Plaintist had leased to the Defendant for pears, certain messages by the same Indenture, the Defendant by the same Indenture, did covenant to repair all the sate Pessuages, alia quam que appunctuate forent divelli per script, did Johannis Smith, and shewed sutther, that the Covenant Described had not repaired the said Hessuages to him demised as associate, and averred that the said house in which the breach of the covenant is assigned, non suit durante termino predicto appunctuate divelli, and upon that matter of reparation they were at Issue, and sound so the Plaintist. It was moved in Arrest of Ludgment, that the Averment in the Replication was not sufficient, so the Lease was made in November to begin the Michael after, and it might be that the averment spessuage, in the not repairing of which the breach of the covenant is assigned, was appointed to be pulled down, sill divelli, before the Term so years began, and then the Describant is not bound to repair it, and then the breach of the covenant is not well assigned, and to the sucre

ment doth not answer the erception, and because this clause (alia quam) is in the body of the Covenant, it sught to be satisfied by him who pleads it, seil. by him who assigns the deech in the Covenant, in which the erception is contained; as by the Lord Dyer in his argument, in the argument of Stowels Case, reported by Plowden 376. Where a unampleaded the Feosiment of Cestuy que use, he ought to plead, that Cesty que use, at the time of the Feosiment was of sull age, sanz memoriz, &c. for that is softhin the purview, cour upon the Statute of 4 H. 7. in pleading of a fine, softhat is in a clause by it self, which conceit of Plowden, the Lord Wray bened to be Lam, softhe said, he that pleads the Feosiment of Cestuy que use, or a fine according to the Statute of 4 H. 7. shall not be driven to shew that the Feosior, of Conusor at the time of the Feosiment, or fine levyed was of sull age, &c but he who comes in by such fine, or Feosiment shall shew the same for his own advantage. And at last after many motions it was resolved by all the Justices, that the Averment asognations supersuous & ex abundant, sor it had been sufficient sorthe Plaintiff to have assigned the breach of the Covenant in the not repairing the Desluage without any Averment, de non appunctuando, and if the house in the not repairing of which the breach of Covenant is assigned, was appointed to be pulled down, the same shall come in on the defendants part to whose advantage it trencheth, sorther and sorther shall come in on the defendants part to whose advantage it trencheth, sorther appointment doth discharge the Covenant as to that: In the same plea, it was moved in stay of Judgment that one Sharp, Solicitor of the said Sharp, who upon his oath denied the same supposed to be given, who upon his oath denied the same and the Foreman of the Jury to whom the monty was supposed to be given, who upon his oath denied the same: And it was moved, if receipt of mony by any of the Jurors should make the Ceruic from the for that cause the store is soil. See

Averment where fuper-

duous.

Pajch. 26. Eliz. Intr. Trin. 25. Eliz. Rot. 492. In the Kings Bench.

XXII. Cordall and Gibbons Case.

In an Ejectione firme, upon not guilty pleaded the Auty found the special matter, viz. that one Hierom Heydon was seised of two Dessuages, whereof the Action is brought, and came to Cordall the Plaintist, and prayed him to send him ten pounds; Gordall asked him, what assure he would give him sor the re-payment of it, he answered, that he would mortgage to him the said two Dessuages, whereupon Cordall lent him the mony, and afterwards they both went to the said two Poules, and being before the doors, of them, Heydon called, Tenants at will of the houses, and said to them, Sirs, I have borrowed of this Cordall ten pounds upon these houses, and if I pay this mony at Michaelmas nert, I must have my houses again, and if not, then I bargain and sell these houses to Cordall; and my Willis, that you become his Tenants, after which Heydon put the said Cordall into the Poules, and seeing him in the houses, he put in the keys of the said Cordall, by the Wilnows, &c. And it was adjudged by the whole Court, that this conveyance, by word of mouth, was good enough to pass the estate, we supra, and the words of bargain and sale in this Case, are as strong, as of gift and grant, See 38 E 3.11. 42 E 3.11. 27 E 3.62. 28 E 3.11.

Pasch, 26 Eliz, Intr. Mich. 25 & 26 Eliz, Rot. 72. In the Kings Bench.

XXIII. Richards and Bartlets Cafe.

Dorothy Richards Executrix of A. her former Dusband, brought an Assumption upon the Case upon a promise against Humfrey Bartler, and declared, that in consideration of two weighs of Corn belibered by the Tellator to the Defendant, he did promile to pay to the Plaintiff ten pounds, to which the Defendant laid, that after the Assumplit the Plaintiff in consideration, that the said two weighs were drowned by Tempest, and in consideration that the Befendant would pay to the Plaintiff for every twenty chillings of the laid ten pounds three chillings four pence, soil in 1010 thirty three chillings four pence, did discharge the said Defendant of the said promise, and averred surther, that he hath been asways ready to pay the said sum newly agreed, up on which there was a demurrer. And the opinion of the whole Court was clearly with the Plaintiff, first because that here his not any conmas clearly with the Plaintin, new vectore that here his not any confideration let footh in the Bar, by reason whereof the Plaintiss should bischarge the defendant of this matter, for no prost but bamage comes to the Plaintiss by this new agreement, and the Desendant is not put to any labour or charge by it, therefore here is not any agreement to bind the Plaintist, See 19 H. 6. Accord, 1. 9 E. 4. 13. 13. H. 7. 15. See also Onlies Cale, 19 Eliz. Dyer, then admitting, that the agreement had been sufficient, yet because, it is not executed, it is not any Bar; And afterwards Judgment was given for the Plaintist.

Pasch. 26 Eliz. In the Kings Bench.

XXIV. Lendall, and Pinfolds Cafe.

The Trespals for breaking of his Tlose, by Lendal against Pinfold, Trespals.

The Tale was, that two wake the Close and entred, and did the Trespals are gainst one of them, and had Judgment, and accordingly, and afterwards brought Trespals against the other, and declared upon the same Trespals; and by Aylis Justice, it is a good Bar, and he is to the case of one Cobham, who brought an action of Trespals a Cro. 73. of Assult and Battery, and recovered and had execution, and after is cro. 30.31. wards brought an Appeal of Mayhem against the same person upon the same matter, the said Aecovery and execution is a good Bar, &c. so here as to the breaking of the close, but not as to the Entry: But by Wray, it is a good Bar for the whole, and he likened it to the case of Littleton, Pl. 376. A Aelease to one of the Trespassers, shall discharge both. Gawdy agreed in opinion with Ayliss.

Pasch. 26 Eliz. In the Exchequer.

XXV. Kempe, and Hollingbrooks Case.

In an Ejectione firms for Tythes, the case mas upon the Statute of 18. Eliz. Cap. 6. By which it is enacted, that no Wasters, and feltimes of any Colledge in Cambridge, or Oxford thall make any Lease for life or years of any farm, or of anytheir Lands, Tenements, or other herebitaments to the which any Tythes, grable Land, weadow, or Pasture both, or shall appertain, unless the third past at least of the accient Rent be referved, and paper in Corn for the said Colledges,

&c. otherwise every Tease without such Refervation shall be void, &c.

Tithesin Lon-

If now, the faid Statute thall be confirmed to extend to Leafes of fuch extraozdinary pecuniary Cithes which are not natural ozpaid in kind. It was argued, that the faid Statute is to be intended of Cithes in kind, and also of such things to be demised which render Coan, hap, &c. But the Cithes in London which is the thing demised in our case, both not render any such thing, but only many according to the becree made for payment of Tithes in London in the time of E. 6. And although the words of the Statute be (other pereditaments) to the which any Cithes, &c. Pet the faid Statute both extend to Cithes in gross, but they ought to be such Tithes which are of such nature as Tithe-com, and Tith-hay: And Manwood chief Bacon held clearly, that the Lease of these Tithes is good enough, notwithsanding the defect by the special Aeservation which is limited and appointed by the Statute, and so by him, a Lease of a Poule, Rent, Mil, Ferry,&c. are out of the said Statute: And as to the Tithes, notwithstanding the words of the Statute are general, any Tithes; yet be conceived, the Statute ought to be intended of Cithes of common Aight, and not of fuch customary Cithes as those of London are, and therefore, if all the Parishoners prescribe in modo Decimandi, scil. to pay a certain sum of mony for all manner of Cithes, upon demise of such a Actory, such special Reservation is not necessary, for these are Cithes against common Right, and no Cithes are within the purview of the faid Statute but those which are annual, and therefore a Lease of Cithe wood is out of the meaning of this Statute, for non renovantur in annum; and he laid that upon a Leale of the Tithes of Chery Trees, a rent ought to be referbed according to the Statute, and the Farmer may bring his be referved according to the Statute, and the Farmer may bring his Cheries to the Harket, and buy Corn. Shute Justice contrary, for the words of the Statute are general. And note, that this Lease was of the Record of Haint Lawrence in the City of London. There was another matter moved in this case, because the lease whereof the Action is brought, was made by the name of Master of Guardian, and the Fellows, whereas the true name of their Colledge is Master and fellows. And it was argued by Arkinson, that the same is not such a Apic nosmer which makes the Lease void, for (sive custos) are words of surplusare, v.7 H.6.13. And also the case of the Cooks, 20 Eliz. Plow. 531. The Corporation was by the name of Masters or Governors and Commonalty, mysterii coquorum, &c. And they made a conveyance by the name of Masters or Governors by the name of Masters or Governors and Commonalty, mysterii coquorum, &c. And they made a conveyance by the name of Masters or Governors, and Communalty, artis size Musterii. &c. name of Paffers of Sovernors, and Comunalty, artis five Mysterii, &c. the same is no such Milnolmer as shall make both the combepance, for Act and Differy are both of one fence.

> Pasch. 26 Eliz. In the Kings Bench. XXVI. Harvey, and Harveys Case.

Confultation.

Milnolmer.

Clare Harvey. One of the Daughters of Sit James Harvy Alberman of ondon Aibelled in the Spiritual Court against Sebastin Harvy, Son and Executor of the said Sit James, sor a Legacy bequeathed to her by her father; Sebastian did not appear, sor which he was excommunicated and taken by a Wit of excommunicate capicudo, and impissoned; and afterwards he came into this Court, and surmised to the Court, That the laid Sit James in his life had given to the said Sebastian all his Soods and Chattells, and was also bound unto the said Sebastian in a Statute staple of two thousand pounds, whereupon he had prohibition, and now the Plaintiss counsel prayed a Consultation, quarems non agirur ad validitation said, au Statut. And Egerton Solicitor of Counsel with the Plaintiss counseles with the Plaint

Cale is a gift by the Testator himself, but in the Tale cited, the gift was by the Crecutor; and also here is a Statute of two thousand pounds, in which Tale the Obligations which could not pals by the beed, Hall be subject to the said Statute.

Trin. 26 Eliz. In the Fxchequet.

XXVII. The Duke of Northumberlands Cafe.

De late Duke of Northumberland feifed of five spelluages in the Bargain and Deed intented and entolled for money bargained and foldto I. L. all his 3 Co. 9. Tenements lituate in the Parish of St. Andrews in Holborn in the Tenure of W. Gardiner, to have to the laid I. L. for life, the remainder to K his Daughter in fee. Atkinson, The bargain and sale is voto by reason of the Missosmer of the Parish, notwithstanding the truth of the Cenure, so by the grant and bargain and sale of all his Tenements in the Parish of St. Andrews nothing passeth, and the truth of the Cenure libbsequent shall not help it: And by Manwood chief Baton, the fale is utterly volv, for the fallity both preceed the truth and ron, the late is utterly vold, for the faility both preced the truth and certainty: And it was argued, that I. L. entring by colour of the lame batgain and late is a diffeilor; as the Cafe is betwitt Croft and Howel, 20. Eliz. Com. 537. Pet if he was but Tenant at Alill when he made the Leafe for years, the lame was a Diffeilin to the faid Duke; and then the Duke being diffeiled, he is attainted of treason, 10. Marix. And now we are to see what things accrue to the Queen by the said Attainder: and as to that it was said, that at the Common Lawa Right of Entry should Escheat, but not without office found thereof, no more than Lands in possession: And by the Statute of 26 H. 8. It is enaced, that every person attainted of high treason, shall forfeit it is enacted, that every person attainted of high treason, shall forfeit all his Lands and Cenements which he had of any estate of Inheritanice, by which Statute a Bishop, Abbot of Cenant in tayl in such Case shall forseit even without Office: But in the Statute of 33 H.8. there is a laving to every other person all such right, possession, so as in that Case by that Statuts the Ising shall not be in possession with out Office, but thall have a right, but cannot enter befoze Office og after. And he is to have Sci. facias against him, who hath the possession, and he shall make his defence as well as he can; and the words of the said Statute, Chat the King shall be in actual possession, shall not be construed to extend to an actual and absolute possession, but such a possession, only which he had at the Common Law after Office found, so as the Statute both not give to the King a larger possession but an easier, without the circumstance of an Office: And of that opinion was Manwood thief Baton, and Shute se cond Baron: And then it was moved further by Cook, because that the cond Baron: And then it was moved further by Cook, because that the Quen by the Attainder hath but a Right, and the Queen makes the grant of the Defluages themselves, the same grant is void. And he granted that the Queen might grant a real Action, and a Right of Entry; but such a grant ought to be conceived in special words, as to say, Chat the Duke of Norrhumberland was seised of five Defluages, and by such a one disselsed, and after the Duke was attainted, and so granted; so the Queen may grant such a Right by reason of her Prerogative, and therefore the same ought to be granted by special words, as in the Case of Mynes in the Commentaties, and according to that was the opinion of the Justices in Cromers Case, 8 Eliz. where Case see revolved by Coke in the Case of the Warquess of Winchester. Cafe fee reported by Coke in the Cafe of the Barquels of Wincheffer.

Trin. 26 Eliz. In the Kings Bench. XXVIII. Dayrel and Thinns Cafe.

Error.

3 Cro. 91. 2 Cro. 13.597. 396. 5 Co. Pag. 36. b. 446.

Dward Dayrel brought a Whit of Error against Sir John Thinn up E on a Judgment had by the Defendant against the Plaintsts father of the Banoz of Mexden: And Erroz was assigned for want of warrant of Attorney. And the Plaintsts payed one Certiorare to the chief Justice of the Common Pleas, and another Certiorare to the Custos Brevium, both which returned, non invenialiqued warr, and now bit John Thinn being dead, the Plaintsts brought another White of Erroz by Journeys accounts against John Thinn Son and Petr of the saturation. In hos that the John Thinn, who appeared and alledged Diminution, in hoc, that the Warrant of Attorney is not certified, and prayed another Certificate unto the chief Justice of the Beuch, and another to the Custos Brevium, and it was argued by Clark, that in this Case Certiforare aught not to be granted, for a Certificate is in the nature of a tryal, which shall not be crossed in the same Action; but the parties to the Action, and their beirs shall be bound by it, especially when the mattet is certified by one who is Judge of the Accord, and that Certiforare sted at the proper of the Plaintist shall be as peremptory, as if it had been such at the prayer of the Defendant, for the Plaintiss may alledge Diminution as well as the Defendant,  $7 \in 4.25$ . by Yelverton. And a man cannot have Certiorare of a thing which is contrary to the Record, which is certified,  $1 \in 4.15$  by Laicon; So Diminution cannot be alledged in this Chartant of Attorney, because it hath been certified bere, that no Chartant of Attorney is to be found, &c.  $9 \in 4.32$ . by Billing; Egerton Sollicitor contrary: For the Certiorare obtained at the lute of the Plaintis, that not prevent the Defendant. And the course of proceeding in a course of Ecroz, when Erroz is assigned out of the Mecozd, and not of a thing within the Record, is such: After Erroz assigned, before that a Sci. fac. Mueth against the Defendant ad audiendum errores, the Plaintiff may pray a Certificate to the Custos Brevium, in whose hands such collateral things remain, for the Plea Roll both remain in the custody of the chief Justice, but the Driginal Writs, Essons and Warrants of Attorney remain in the hands of the Custos Brevium; and such a Certificate the Court may grant to the Plaintiss, without making the Defendant priby to it. And notwithstanding that the Desembant bath pleans and so has a suppose to he for the form ed, in nullo eft erratum, and to hath affirmed the fecord to be furb as is certified, pet the Court ex Officio, thall award a Certiorare to alcertain themselves if there be any fuch Marrant of Attorney of not: which fee 9 E 4 32. by Billing, and therefore the Certiorare being awarded ex Officio, fight not prejudice the Defendant; and to this purpose be effect the Case betwirt the Lozd Norris and Braybrook in a Whit of Error, where the Lozd Norris being Plaintist prayed a Certiorare to the Custos Brevium, to certifie an Driginal Whit, upon which a common Accourty was had, and had it, and the Custos Brevium certified, that there was no Driginal; and afterwards the Desembant prayed another Cortiorare, and had it: and to in our Case here especially, because the Desendant was not party to the Accord, not hath day in Court, at the time that the law Certiferate was granted, for the Desendant is not party before the Sci. secias ad addicadom errores be issued forth against him; and therefore he comes timely enough to pray a Certiferate. See 28 H.S. 10. and 11. Am I grant that the Certificate upon a Certiorare which was awarded after a Safac, ad audiendum errores is peremptory and final, but contrary where it is granted before the awarding of fuch Scire beias: See Book of Contries 271. The Plaintiff assigneth Error in the Driginal Writ, & petit br. Domini Regis Custodibus Brevium, &c. ad breve illud origin. certificand. and up-

Certiorare,

on the return of the Certiorare, the Plaintiff praped a Scire faciasad audiendum errores. And fee there 293. where it appeareth, fol. 272. that Certio-rare issued at the suit of the Defendant in Erroz arter he had alledged Diminution: and that is after Scire facias ad audiendum errores returned; and fee Certiorare befoze Sci. facias awarded 271, &c. and this Certiorare is only ex officio, and awarded only to enform the Court: And in respect of the Certiorare the chief Justice of the common Pleas, to whom the Certiorare is directed, is but a Dinister, and not a Judge. And as to the Cale of 9 E 4 32 before cited, he could not have a Certiorare so? he tould Diminution not alledge Diminution, because he had pleaded in Nullock erratum, by which Pleaded he had confessed the Record which is certified to be a full and perfeq iRecord, and fully certified, and against that matter be shall not alledge Diminution: And in our Case there is not any such contrariety as hath been objected, sor the return of the Certiorare is, Non inveni aliquod warrant. not precisely, quod non habetur aliquod warrantum;. And therefore if the Court now at the praper of the Defendant grant another Certiorare, upon which is a Retorn (quod habetur warr. Attornat.) the same is not contrary to the return of the sirst Certificate, but they may both stand together, for upon further learth such Marrant of Attorney may be found: so upon the matter the Court shall not be enverged by any such contrary to the matter the Court shall not be enverged by any fuch contrariety, for (non inveni aliquod warrant.) returned upon the first Certiorare, and (inveni quoddam warr.) upon the fecond Certiorare are not meet contrary; and it seemed to Wray thief Justice, that it would be hard to grant a new Certiorare in this Case, but if any variance could be alledged it should be otherwise, as it was adjudged in the Case of one Lassell, who certified no Marrant of Attorney, and afterwards it was moved for another Certiorare, as it is here, and becaule the Diginal was inter Johannem Laffels ar. executor. Testi. &c. where he was not named Erecutofin the first Certiorare; upon that matter a new Certiorare was granted.

Trin. 26 Eliz. In the Kings Bench.

XXIX. Withy and Saunders Cafe.

They libelled against Saunders in the Spiritual Court, and now Tithes will not v came Saunders and furmised, that Withy had livelled against him pass by grant for Cithe grass, and shewed, that all the claim that Withy had to the without deed sate Cithes was by a grant without deed, and by the Law such things would not pass without deed; and also that the Spiritual Court would not allow of this Plea, and therefore prayed a prohibition: And the Court upon the first motion conceived appolibition thould pais, for if the grant be without deed, nothing palsed, and then hath not Withy caule to claim these Cithes against the said Saunders. And notwithstanding that Cithes are quodam modo spiritual things, and so bemandable in a Court of that nature, pet now in divers relpeas they are become a Lay-fee, and lay-things, for a Curit of Affile of Mortdamcester, and an Affile of novel disciss lyes of them, and a Kine may be levyed of them. But it hath been doubted, whether Cithes be devilable by Cuill: But at another day the matter was moved, and the Court was clear of opinion, that a Consultationshould be awarded, to whether Withy hath right of not right to these Cithes, Saunders of common right ought to pay his Cithes, and he ought to sever them from the nine parts, and wholeseer takes them, whether he hath right to them of no right, Saunders is discharged: But Saunders may prescribe in mode decimand; without making mention of any severance, and may stirnise, that the Cithes do belong to I.S. with whom he hath compounded to pay such a suarsoz all Cithes, and afterwards a Consultation was awarded.

#### Trin. 26 Eliz. in the Kings Bench.

XXX. Stacy and Carters Case.

Tacy brought an Action of Trespals for breaking his Close against Walter Carrey, and Declared of a Trespale in Somers-Land in Tunbridge; of Novel difficient against the now Plaintiss, and supposed himself to be difficient of his free-hold in Lee juxta Tunbridge, and the Land where the Crespals supposed to be done was put in view to the Recognitors of the said assist, and success of the said assist of the the Land then put in view is one and the fame, &c. upon which there was a Demurrer: Erception was taken to the form of the murrer, because in the perciose and conclusion of the Demurrer these mozds are omitted, Er hoc paratus est verificare. But as to that, it was said by the Court, that the Demurrer was well enough, with or with out fuch Aberment in the conclusion of it, which fee oftentimes in the Commentaries, &c. and in the Book of Entries 146. the greater part of the Demurvers have not any such conclusion. Another Exception was taken to the bar, because the Defendant pleads, that hererofoxe Walter Carter had brought an Assie against the now Plaintist, &c. and that the Land. put in view to the Recognitors of the Affile per preferrom Warrhamum Carter, &c. and the Land where, &c. is all one, &c. here is Warrhamum for Walterum, and notwithstanding that it was after be-mutrer, and not after berdict, it was adjudged amendale; and as to the matter of the bar, it was faid by the Defendants Council, that recovery of Lands in one Cown, by Pracipe quod reddat, is not a bar for Lands in another Cowns but where the recovery is by Affile it is otherwile, for there the Plaint is general De lib. tento, and the Plaintiff thall recover per vitum Juratorum, and the view is the warrant of the Judgment and Execution. And therefore if a recovery in an Allie be pleaded in bar, Not compiled, is not any Plea against it, as in the Case of re-coveries upon a Pracipe quod reddar, but not put in view, and so not comprised, &c. which proves that the Record doth not guid the recovery, but the view of the Jurozs. See 26 E 3.2. Assie brought of Lands in D. the Tenant saith, that he holdeth the said Lands put in diew joyntly with A-not maned in the Writ, &c. and sheweth the deed of Joynttenaucy, which speaks of Tenements in B. and the plea holdeth good, because he assengeth the Joynt-tenancy and the Lands put in view: See 14 E 3. It was said on the Plaintiffs side, that recovery in Lecjusta Tunbridge could not extend to Lands in Tunbridge, no moze than a recovery of Lands in one County can extend to Lands in another County: See 23 E 3. 16. Assis of Novel dississin brought of Lands in N. the Defendant pleads recovery in Affile, &c. brought before by him against the now Plaintist of Lands in H. and the same Lands put then and now in view, and adjudged no bar. See also 16 E 3.16. in an affile of Fenements in W. the Cenant pleads a Recovery of the same Lands again one A. by affile brought of Cenements in C. which was found by the affile, and that C is a hander of W. and the Filaintiff notwith family, that recovery for pleases have the Plaintiff notwithkanding that recovery to pleaded had Jungment, for a recovery of Lands in one Cown that not be a turn on affile of Lands in another Cown. See Br. Tic. Judgment 66. 10 B 3. And the whole Court was clear of opinion, that the plea in bar was not good, for in the Affile which is pleaded in bar in the principal Cale, the Cenant there, who is now Plaintiff in this Action of Crefpuls, pleaded Nulson and differing, which is no plea, as to the Free hold in Lee was Tunbridge, and therefore it cannot be like to the Cale which Lee juxta Tunbridge, and therefoze it cannot be like to the Cale which hath been put of 26 E 3. foz there the Cenant pleaded, that he beld

Averment

8-

the said Lands put in view joyntly, for there he agreeth with the Plaintiss in the Lands demanded, the which Lands are put in view; but if in the Case at bar the Defendant being Plaintiss in the Assie, the now Plaintiss being then Tenant, had pleaded to the Land put in view in bar, and the Plaintiss in the Assie had recovered, now in this action of Trespals the Plaintiss in the Assie being Defendant in the action of Trespals, might well plead this Accovery in bar, so by his area in the Assie he hath they himself to the view, and to the Land put action of Crelpals, might well plead this Accovery in bar, for by his plea in the Affile he hath tyed himself to the view, and to the Land put in view, but it is not so in the Case at Bar, where the Cenant in the Affile pleads, nul tort, nul dissim, for there he both not plead express to the Land put in view, but to the supposal of the Plaintiff, so de libero termento in Lee juxta Tundridge: afterwards Wray, with the affent of the other Justices awarded, that the Plaintiff thould recover his damages: See by Wray, 44 E 3. 45. in Affile of Cenements in B. the Plaintiff pleads, that he himself drought an Affile of the same Tenements, and his plaint was of Tenements in E. and the same Tenements put in his plaint was of Tenements in E. and the same Tenements put in view, and recovered, and holden a good Plea, because the Tenant hath said, that the same Tenements were put in view, and that took by Affile, upon which the Plaintiff faid, not put in view, and to not compalled.

Trin. 26. Eliz. In the Kings Bench.

XXXI. Benicombe and Parkers Cale:

M an Action of Trespals the Jury found this special matter, that the Grandfather of the Plaintiff was feiled, and made a feoffment to the use of himself for life, the remainder to the use of John Father of the Plaintiffin tail, the Grandfather died, the Father entred, and by Indenture by words of bargain and fale, without any words of Dedi & Footments concess, conveyed the Lands to the use of A. in Fee, and in the same Indenture was a Letter of Attorney to make Livery, which was made accordingly; and the said A. by the said Indenture covenanted, that if the faid John thould pay before such a day to the said A. forty chillings, that then the said A. and his speirs would stand seised, &c. to the use of the fait John and his Deirs; and if the fait John bid not pay, &c. then if the faid A. Did not pay to the faid John within four days after ten pounds, that then the faid A and his Deirs from thenceforth thall be feiled to the ule of the laid John and his Deirs, &c. and the laid John covenanted further, by the faid Indenture, to make such further affurance as the Council of the faid John should advise. Each party failed of payment. John levied a Fine to A. without any consideration; it was adjudged upon this matter a good Feofiment well executed by the Fibery, not Hob. 151. withstanding that the words of the conveyance are only by bargain Dyer 361.2 and fale; and that the Covenant to be ferfed to the new uses uponpay. More 194. ment, and not payment being in one and the same deed, should taile 197. the use upon the contingency, according to the limitation of it; and store 35. b. Judgment was given too the Plaintist accordingly.

Trin. 26 Eliz. In the Kings Bench.

XXXII. Bedows Cafe.

M an Action of Debt upon a Bill fealed against one Bedow; he bemanded Oper of the Bill, which was, Memorandum that I John Bedow have agreed to pay to R. S. the Plaintiff twenty pounds, and thereupon there was a Demurrer, first, that the Deed wanted the woods In cujus rei testimonium, &c. but notwithkanding that the Court held the Deed good, and said so it was lately adjudged: Another matter was because the words of the contract are in the preter Tense, I have a greed; but notwithstanding that exception the Plaintist had Judgment to recover, as by Wray, these words deal & concess, according to the Grammatical sence imply a gift precedent, but pet they are used as words of a present conveyance, Judgment was given for the Plaintiff.

Pasch. 27. Eliz. In the Common Pleas.

XXXIII. Marsh and Smiths Case.

Grants. Mannor-

2 Len. 41, 42.

Mannor, what it is.

Reputation.

1 Inft. 122. 2 32 H. 6 11.

Grants of the King.

Teorge March brought a Replevin against Smith and Pager, who make 1 Cro. 38. 39. CEorge Marin violity is a septemble against small the pleading the Cale was, That Six Francis Askew, was seited of the Hannoz of Castord in was, That Six Francis Askew, was seited of the Hannoz of Castord in his Demeine, as of fee, which Pannoz did extend unto Daston, North-kelsey, South-kelsey D. and C. and had demeines and services, parcel of the said Mannoz, in each of the said Cowns, and so seised, granted totum manerium suum de North-kelsey sin North-kelsey, to the said Bard and his Deirs, and granted surther, all his Lands Tenements, and Dereditaments, in North-kelsey; and to that grant, the Tenants in North-kelsey did attorn; And the Land in which the said Distress was taken is in North-kelsey; the only question in the case was, if, by this grant to Ralph Bard, a Mannor passed, or not: And the case was argued by the Justices. And Periam Justice argued. That mon this grant no Mannor palled, a Hannot paned, of not: And the case was argued by the Aunices; And Periam Justice argued, Chat upon this grant no Mannot palled, for before the grant, there was no Mannot of North-kelley, of in North-kelley, therefore no Mannot can pals, but the Lands and lethices in North-kelley shall pals as in gross, for they were not known by a Mannot, but for parcel of a Mannot: And a Mannot is a thing which cannot be so easily created, for it is an Decediament which dotheon sist of many real things, and incorporated together before time of memory; common reputation cannot be intended of an opinion conceived within three or four years, but of long time: And appendance ceived within three or four years, but of long time; And appendancy cannot be made prefently, but by a long trac of time: As an Advowfon in gross cannot be made by an Ac appendant, and the Queen her felf by her Letters Patents cannot make a Pannozat this day, à multo fortiori a subject cannot, and the Queen cannot by her Letters. Patents without an Act of Parliament anner a Mannoz to the Outchy of Lancaster, which see I Ma. Dyer 95. And where it is usual, that the Queen both grant Lands, tenendum de manerio suo de East Greenwich in communi soccasio, it upon the death of such a Stantee without beir, the Land hall not be parcel of the sannoz, foz the Land was not parcel of the Mannoz in truth, but in reputation: And he cited a case, that the Lozd Sturton was seised of the Mannoz of Quipcamore, and was also seised of the Mannoz of Charleton which was holden of the Mannoz of Charleton which was holden of the sain Mannoz of Quincamore; The Lozd Sturton was attainted of felony; and afterwards Queen Mary gave the law Mannoz of Quincamore to Sit Walter Mildmay cum omnibus suis juribus & parcellis, it was adjudged that the Mannoz of Charleton did pals, foz it is now become parcel of the Mannoz of Quincamore; and I grant, that things which go with the Land shall pals well enough: As if the Queen grant to three Coparceners of three Mannozs, the liberty of Charten in all the laid three Mannozs, they afterwards make partition so age ach Conarcener Manuors, they afterwards make partition to as each Coparcener hath a Mannoz, and the one of them grants het Mannoz, the Grantee thall have Marren: But if the Queen grant a Leet (ut supra) and the Coparceners make Partition, and each of them hath a Mannoz, the thall not have also a Leet, but the Leet which was grantted both remain in common, and there thall not be there, upon fuch partition, leveral Reets: And also I grant that in the cale of two coparceners of a Mannozif to each of them upon partition be at

lotted demeans and fervices, each of them bath a Mannoz, for they were compeliable to make partition by the common Law being in by pelcent, See 26 H. 8. 4. 9 E. 4. 5. contrary of Toynt-tenants, for they are in by purchase, and were not compeliable by the common Law to make partition and therefore upon partition betweet them a Kent cannot be referred for the equality of the partition: And in every against not be reierved to the equality of the partitions with the every symbol a Court is requisite, for a Court Baron is incident to a Name, but court baron a Court cannot at this day be founded or specied, but it sught to be of long time: And in our Cale, no Court bath ever been holden in Northkeley: And if I be feiled of the Manoz of B. which extends into C and B. and I grant my Namoz of B. in D. now a Namoz passeth, and both extends into D. and the residue which is in C. shall remain in me in grass, tend into D. and the relique which is in C. shall remain in me in grafs, v. 9 E. 4. 17. Careby; And if I be letted of a Manaz which both confist of services, and of twenty free-holders, and one hundred Acres of Demelnes, and I grant the services of my twenty free-holders, and facts of the said one hundred Acres, a Manaz shall pals, although it was not granted by the name of a Manaz; but if I grant the services of three, sour, or two of my free-holders, and forty or twenty of the said one hundred Acres, upon such a grant no Manaz shall pals: Windham Justice contrary. We are not here to speak of the creation of a Manaz, that is a fortaign matter, but we are here to consider upon the division, and apportionment of a Manaz. They that have argued in this case at the Bar, have food much upon the words of sider upon the vivision, and apportionment of assand. They that have argued in this case at the War, bave fload much upon the words of the Conveyance, manerium sum de North-kelsey, and that Sir Fr. Askey at the time of that assurance, had not any Asand of North-kelsey, of in North-kelsey, but that is not any reason, for is Cessuy que use ( mean between the Statute of 1 E. 3. & 27 H. 8.) will make a feosiment of the Asand which was in use, by these words, manerium sum, the same had been good, and yet it is not manerium sum; but the Wand of the feosices, but it may be said sum, by receiving of the profits according to the trust and considence reposed in the feosices; so in our case, in as much as Sir Fr. Askew had before this grant aswell bemelnes as services in North-kelsey, it may collaterally be said a Panor there, and notwith-standing that empore concessions (proprie loquendo) no Panor was in North-kelsey, yet now upon operation of the Taw, upon this grant a new Asand shall rise; so in divers cases where a thing which was not in essence, upon a grant map rise; As if I grant unto you out of my hostore, upon a grant may rile; As if I grant unto you out of my Land a Kent de novo; And also a thing which was not in ese before, may upon a grant take upon it a new nature; As if I feised of a great Alod, grant to you Esovers out of it, they were not before in me but as Alods and Trees, now by this grant they are become Esovers in the Granter, so as they are in the Granter, so as they are in the Granter, no not you have not definite than they are her more in me. in the Grantee, so as they are in the Grantee in another nature, than they were in me: So in our case, although North-kelsey was not a Harno; in Six Fr. Askew, yet now upon the grant it is a Hano; in Bard, g E 4 17. And as to the inatter which bath been objected, because a Court cannot now begin, the same is not any reason, so, the Tourt Baron is incident to the Manoz, and also to every pact of the Manoz, and transitory through the whole Manoz, and if Six Fr. Askew had solve all the ventilies of the Asanoz in Castord, where the Court Baron so, the said Hanoz had always been held and not elsewhere, yet such a Court might be bolden in any part of the Demeans in any other of the said Towns: The Lord Anderson, to the same purpose, It hath been argued of the other size, that the Asanoz both not pass, because the grant is in these mords, de North-kelsey are bosh as matter of surplulage, and the grant ball he construed as if the boxes had been manerium sounts. North-kelsey: And a Hanoz is such a thing, as may he determined, divided, and subjected: As if the Lord of a Manoz leaseth so, years all the Demeans of the Manoz, the Asanoz is suspended but sing years all the Demeans of the Manoz, the Asanoz is suspended but

Poft. 32.

ring the term for years, as lately it bath been adjudged. And a warranto may be divided, as if a feofiment in fee be made to two with warranty, and the one of them releaseth the warranty : vide L 5.E.4. 103. A. seised of a Manoz which extendeth in four Cowns, B. C. D. and E. and he gives his Manoz in B. C. and D. by this gift the Manoz and all that is in the said four Cowns passeth. And he cited also a Cale 2 1 E. 4.3. The Lord of a Manor erected a Chapelwithin his faid Manor as a Chapel of Cale, &c. and afterwards it is a Parity Church, now it is become presentable; an Advowson appendant, as the soil upon the which the Church is built is parcel of the Manor. See 32 H.6.9. One Manor may be parcel of another Manor, as A holdeth of B. twenty acres of Land, as of his Manoz of C which Manoz B holbeth of D. as of his Manoz of E. B. vieth without heir, to as his Manoz of C. is escheated unto D. now the twenty acres are holden of the Manor of C. as they were before, and the Manor of C is by the Escheat become parcel of the Manor of E. and by Lease of the Manor of E it shall pass. And I to not know any difference between the Case of Parceners, and the Case of Joynt tenants, for now they are both equally compellable to make partition: And he cited the Case of one Ecopy. lately adjudged, viz. the Queen was seised of the Actory of D. which extended into the Counties of Lincoln and York, and the Queen granted her Aectory of D. in Lincoln, these are several grants, and now upon the matter they are become several Aectories. And as to that which hath been objected concerning a Court Baron which ought to belong to this new Manoz, and that such a Court cannot now at this day be erected, and therfoze here cannot be a Manoz; here needs not the erection of any new Court, but fozasmuch as the Court Baron befoze this grant might be by Law holden in any place within the Manoz: therefore every part of the Demeans of the Manor is capable of a Court to be holden there. As where one is seised of a Banor to which an Advowson is appendant, now is the Advowson appendant not only to the Advowson, but to every part of it; for if he alten an acre, parcel of the Manor with the Advowson, the Advowson is now appendant to the soil acre: See 42 E. 2.26. So in the Take at Mar, because this liberary faid acre: See 43 E. 3. 26. So in the Case at Bar, because this liberty and franchise of a Manoz is throughout the whole Panoz, and in every part of the Services and Demcknes upon this grant of the Services and Demelnes in North-kelfey, and of his Banoz in North-kelfey, a spanoz paffeth; which Windham alfo granted and agreed unto. Rote at this time there were but three Judges in this Court : And afterwards Judgment was given for the Defendant.

Pasch. 27 Eliz. In the Kings Bench, Rot. 584.

XXXIV. Alington and Bales Case.

1 Cro. 660,

Arbitrament.

A Lington and others, Executors of Sir W. Cordel late Master of the Rols, brought an Action Debt against Bales: The Tale was this, One Bream being seised of certain Lands, by Indenture bargainsed and sold the same to one Plate by these words (rive, grant, bargain, sell) and by the said Indenture covenanted with Plate, that the said Plate and his heirs should quietly enjoy the said Lands without interruption of any person of persons: And afterwards certain controverses tissing betwirt them concerning the said Lands, the said Bream and Plate submitted themselves to the award and arbitrament of Sir W. Cordel, to whom they were bounded severally soft the personnance of such as ward, the which Sir W. amongst other things awarded, that the said Plate and his heirs should enjoy quietly the said Lands, intamamplo modo & forma, as the said Land is conveyed and assured by the coveyance and assurance assigns and the truth was, that the said Bream at the time

of the faid Affurance was bounden in a Recognizance of fix bundzed pounds to one More, 15. Eliz. and afterwards More 16 Eliz. fued a Sci. fac. upon the fato Accognizance; and 18 Eliz. the bargain and fale afogefait was made; and afterwards 19 Eliz. More fued forth Ercution by Elegit, and the movety of the fait Land affured to Place was delivered in Execution to More. And if upon the whole matter the Arbitrament was broken was the question. It was argued by Godsey, that the Plaine tist ought to be barred; and first, he conceived that these words in the Indenture (give and grant) did not help the Action, for the Lands passifed with a charge, and the general words Dedi & concess, do not extend 3 Len. 175. see this collateral charge, but to the direct right of the Land only; but Post. 93. if a ftranger had put out the bargainee, there upon luch general woods, Pot. 179, 279, an Action would lie, but as the Cale is, they bo not give any cause of 1 last, 366.2 k. Action, too the Necognizance was a thing in charge at the time of the Dy: 42. Afflitance: and pet fee 3 1 E 3. Br. Warr. Chartæ, 33: A. entroffeth B. with watranty, who byings a Warrantia Chartæ, and recovers pro loco & tempore, and afterwards a stranger both recover against him a Rent charge out of the said Land, and it was holden, that upon the matter B. should have erecution: the special words of the Aribitrament, upon which the Action is brought, are, that the said Plate and his Heirs should cnjoy the faid Lands in tam amplo modo & forma, as it was affured and conbeyed to the said Plate; ergo, not in more ample manner; and the said 1 Cro. 660, Land was conveyed to Plate, chargeable to the said Recognizance, 661, therefore if Plate enjoy it charged, there is no cause of Action; And as Owen Rep. 65, to the Covenant in the Indenture, that Plate and his Deirs shouldent 2 Cro. 571, joy quietly the said Lands without interruption of any person, the 1 Roll. 425. for quietly the lato Lands without interruption of any person, the same is a Collateral sucety; and the words of the Award are, that Plant shall enjoy it in tam amplo modo & forma; as it is conveyed and assured by the assurance asocessiv without interruption, these are not words of assurance, for the assurance both consist in the legal words of passing the estate: soil bargain, sale, Dedi, concess, and in the limitation of the estate, and not in the words of the Convenant: And therefore it hath been adjudged, that is I be bounden to A in an Obligation, to assure to him the Dannay of D,&c. is A tender to me an Indenture of bargain and sale in which are many of openants. I am not bound in the me and fale, in which are many Covenants, I am not bound upon the peril of my Bond to feal and deliver it. Also here both not appear any interruption against the Covenant in the Inventure, for here is not any lawful Execution, for it appeareth here, that More hoth sued Execution by Elegic 4 years after the Judgment in the Scire facias, in which case he thall be put to a new Scirefacias, for the Sheriff in this Cafe out ht to have returned, that the Conulog after the Recognizance had enfeoffed bivers persons, and shewed who, and upon that matter returned, the Course should have a Sci-facias against the Feosfees, vide F. N. B. 266. And the Court was clear of opinion against the Plaintist.

Trin. 27 Eliz. In the Kings Bench. XXXV. Floud and Sir John Perrotts Cafe:

Loud recovered against Sir John Perrot, in an Action upon the Cafe : Cro. 63. upon a promife, eighty fix pounds, against which Floud and Barlow Post. 264.
affirmed a Plaint of Debt in London, and attached the said moeny in 3 Len. 240. the hands of the law Sir John, and had execution according to the custom of London. And now the law Floud sued a Scire facias against the faid Six John, who appeared, and pleaded the laid Execution by attachment; upon which floud the Plaintiff oto dennur in Law: And it was adjudged no plea, for a duty which accrueth by matter of Record cannot be attached by the custom of Loudon. And notwithstanding that the custom of Loudon be layed generally in aliquo dedito, and decording that the custom of Loudon be layed generally in aliquo dedito, and decording that the custom of Loudon be layed generally in aliquo dedito, and decording that the custom of Loudon be layed generally in aliquo dedito, and decording that the custom of Loudon be layed generally in aliquo deditor. mages recovered are quoddam debitum, as it was urged by the Coun-

cil of the Defendant: Pet the Law is clear, that Judgments given in cil of the Defendant: Pet the Law is cleat, that Judgments given in the Kings courts of the King ought not, not cannot by fuch particular cultoms be defeated by particular cultoms be defeated by particular cultom of places. Courts not to be defeated by particular cultom of places. It was not good, for the Sheriff by virtue of a Pieri facial levyed the money, which one to whom the Plaintiff was envented, of the attachment was not good, for the cultom of attachment cannot reach upon a thing of to high a nature as a Record is, the fame Law of Debt upon a Recognizance and Statute, &c. and it was afferned by Wray chief Julice, that upon great deliberation it was afferned by Bromley Love Chancellor himself, the Love Anderson, Mead and Periam Justices, that where a Openhant, having in an Action recovered certain de-Bromley Loza Councillo gimient, the Lozo Anderson, Mead and recam Junices, that where a Deschant, having in an Action recovered certain domages, became Bankrupt, upon which issued an Commission upon the Statute of 13 Eliz. of Bankrupts, that such Commissioners could not entermeddle with such damages, to dispose of them to the Creditors, according to the said Statute: But now see the Statute of 1 Jacobi. The Commissioners have power to dispose of such behts, &c.

Trin. 27 Eliz. In the Kings Bench.

XXXVI. Sir Walter Hungerfords Cafe.

Grants of the King.

In a Replevin by Sir Walter Hungerford, the Cale was this, the Queen being leiled of a great Maffe called Rudde flown in the Parish of Chipnam, granted to the Mayor and Burgesses of Chipnam, the movety of a Pard-land in the said Calaste, without certainty in what part of the a Pard-land in the laid Mane, without certainty in what part of the Calade they hould have the same, of the special name of the Land, of how it was bounded, and without any certain description of it. And afterwards the Queen granted to the said Sir Waker the said Wake, and afterwards the said Payor and Burgesses by warrant of Attorney under the Common Seal, authorized one A. to enter in the said Waste, and in the behalf of the said Mayor and Burgesses to make election of the said moyety, &c. who did so accordingly. And upon this matter gives in evidence the parties did demur in Law, and the Jury were discharged. And it was holden and resolved by the whole Court, that the grant to the Navor. &c. mas utterly hold for the incertainty that the grant to the Napozi, &c. was utterly voto for the incertainty of the thing granted: And if a common person do make such a grant it is good enough, and there the Orantee may make his choice where, &c. and by such choice executed, the thing shall be reduced into certainty: which choice the Orantee cannot have against the Queen, which difference was agreed by the whole Court: And it was surther holden, that this grant was not only void against the Queen her self, but also against Sir Walter Hungerford her Patentee. It was surther holden by the Court, that is a common person had made such a grant, which ought to be reduced to certainty by Election, and the Composation to whom the grant was made (ur spra) should not make their election by Attorney, but after that they were refolved upon the Land, they hould make a special warrant of Attorney, reciting the grant to them, tin whip part of the laid waffe their grant should take effect, East, Clest, &c. or by buttals, &c. according to which direction the Attorney is to enter, &c.

Election.

12 Co.86. 87. Dy.372.b.281. Noy. 29.

Trin. 27. Eliz. In the Common Pleas.

XXXVII. Watts and Jordens Cafe.

IN Debt by Watts against Jorden, process continued until the Defendant was Dut lamed, and upon the Capias urlagarom he appeared and pleaded to issue, which was found for the Plaintist, and Judgment giv-

en accordingly. And now came Jourden and caff in a Witt of Erroz, Error. en accordingly. And now came Jourden and cast in a Culit of Erroz, early assigned for Erroz, that he appeared upon the Capias utlagatum, and pleaded to ssue, the Driginal being determined, and not revided by Scire facias, upon his Charter of pardon; Anderson Justice was of opinion, that it was not Erroz, so the Statute of 18 Eliz, had dispension with it, being after verdict, so the words of the Statute are, for want of any Culit Driginal or Judical. Windham Justice contrary, for the Statute doth not ertend, but where the Driginal is imbelelled, but in this of the statute and are but in this Cafe it is not imbefelled, but in Law determined, and at last the witt of Erroz was allowed:

#### XXXVIII. Trin. 23 Eliz. In the Common Pleas.

The Cafe was, A. feifed of Lands by his Will devised, that his Er- 3 Len 119. cutoes thould fell his Lands, and died, the Executoes levy a fine thereof to one F. taking mony for the same of F. If in title made by the Conucee to the Land by the fine, It be a good plea against the the Conceived that it was: But by Windham and Periam, upon Mot-guil-fine to fap, Quod partes ad finem nihil habuerunt, was the question. Ander-fon conceived that it was: But by Windham and Periam, upon Mot-guil-ty, The Concide might help himself by giving the special matter in evidence, in which Case the Concide shall be adjudged in; not by the Fine, but by the Devise: As by Windham. A. deviseth, that his Exes Devise. cutous shall sell a Aeversion of certain Lands, of which he dieth selsed; Co. 1 last. 113. they sell the same without deed, and good; so the Clende is in by the a Devise and not by the conveyance of the Executors: See 19 H. 6.23. And by Periam the Concide may help himself by pleading, as he who is in by the Feotiment of grant of Cestur que use by the Statute of 1 R. 3.

Trin. 27 Eliz. In the Common Pleas.

#### XXXIX. Albany and the Bishop of St. Asaphs Case.

A Lbany brought a Quare impedit against the Bishop of St. Asaph, who , Cro. 119.

justified for Laple: The Plaintist by Aeplication said that before
the ux months expired, he presented to the said Bishop one Bagshaw, a Quare impePasser of Arts and Preacher allowed, &c. The Defendant by way of dic.

Rejoynder said, that the Church woon the presentment to which the
Action is brought is a Thurch with Cure of Souls, and that the Pasrishioners there are hymine Wallici Welliam locusted lighting & consideration rishioners there are homines Wallici, Wallicam loquentes linguam & non alian. And that the said Bagshaw could not speak of understand the called Language, so which cause he resuled him, and gave notice to the Plaintist of such resulal, and of the cause of it, &c. upon which the Plaintist ofd demur in Law, And sick it was agreed and resolved by the whole Court, that in the computation of the fir months in fuch Cases, the Reckoning ought not to be according to the Kalender, January, February, &c. but Secundum numerum lingulorum dierum, allowing eight and twenty bays to every month; Walmesley Sectioant argued Co. 2 lnst. 36 f. for the Plaintist, and he took exception to the Aejopnder; for in that yel. 100. the Defendant had departed from his Bar; for in the Bar the Defen 2 Cro. 1476 dant intitles himself to the presentment by reason of Laple, and in the departure. Rejoynder he consessed the presentment of the Plaints, and pleads his resulal of his Ciark, and shewes the cause of it; so the want of the Meish Language, which is a Departure: And he cited divers cases to the same purpose, 27 H 8.2. In forfeiture of Warriage, the Defendant pleaded the Feossment of the Ancestor of the Deir to divers persons, absorbanched he died in the homage of the Plaintisthe Plaintist by Aesplication sate, that the last Feossment was made to the use of the said Ancessor and his heirs: The Defendant by Aejoynder saith, that the

the fair Ancestor vio declare his will of the fair Lands, the same was holden a Departure, for he might have pleaded the same in Bar, and 21 H.7.17, 18. & 37 H 6.5. in Crespals the Defendant pleaded, that I.S. was seised of the Land where, &c. being Land devisable, and devised the same to him and his beirs; the Plaintist by Aeplication sato, that 1. S. at the time of the device was within age, &c. The Defendant by Rejounce sato, that the custom there is, that every one of the age of fifteen years might device his Lands,&c. the came was holden a departure : But to this Exception the Court took not much regard: But as to the matter in Law, it was argued by Walmelley, that the defeat of the Welfish Language assigned by the Defendant in the presence of the Plaintiff is not a sufficient Cause of refusal; for notwithstanding that it be convenient that luch a Prefentee have the knowledge of luch Language, yet by the Law of the Land, ignozance of fuch Language, where the party bath more excellent Languages, is not any diability; and therefore we fee, that many Bilhops in Wales, who have the principal Cure of Souls, are Englishmen, and the Welsh Language may easily be learned in a short time by converse with Welsh men: And the Statute of 1 Eliz. which established the Book of Common Prayer, ordaineth, that the lato Book of Common Praper hall be put in ule in all the Parith Churches of Eng. and Wa. without any provision there for the translation of the said Book into the Wellh Language. But afterwards by aprivate Act it was done, by which it is enaced, That the Bishop of Wales Mould procure the Epiffles and Golpels to be translated, and read in the Wellin Language, which matter our Presentee might do by a Curate well enough: And he conceived that by divers Statues, Aliens by the Common Law were capable of Benefices. See the Statute of 7 H2. Cap. 12. 1 H5. Cap. 7. 14 H6. Cap. 6. and before the said last Statute Irish men were capable of Benefices. Gawdy Serieant contrary: and he confessed, that at the Common Law the before afozefato were not any causes of refusal; but now by reason of a private Ac made, 5 Eliz. Entituled, An Ac made for the translating of the Bible, and of the Divine Service into the Wellth tongue, the same describe we come a god cause of refusal; in which act the mischief is recited, viz. That the Inhabitants of Wales Did not understand the Language of England, there foze it was Enaced, That the Bishops of Wales should procure so many of the Bibles and Books of Common Prayer to be imprinted in the Wiels Language, as there are Parishes and Cathedral Churches in Wales, and to upon this Statute, this imperfection is become a good cause of refusal. And he likened it to the Cale of Coparceners and Joynttenants, who now, because that by the Statute of 32 H 8. Joynt-tenants are equally capable to make partition as Coparceners were by the Common Law, Now Partition betwirt Joynt-tenants within age is as firong as betwirt Parceners within age. But as to the point it was faid by the Lozd Anderson, that it is very true, that upon the said Statute the want of the Welsh Language in the Presentee is now become a good cause of refusal; but because the said Ax being a private Ax hath not been pleaded by the Defendant, we ought not to give our Judgment according to that Ax, but according to the Common Law. Another matter was moved, because here appeareth no sufficient notice given to the Patron after the faid Aegulai, for the Plaintistoid present the thirtenth of August (the Church voyding the fourteenth of March before) the nine and twentieth of August the six months expired; the fourth of September the Defendant gave notice to the Patron of the resulal, and the fourteenth of September was the Collation; and it was said by the Lord Anderson, that it appeareth here, that there are two and twenty days between the Presentment and the Motice, which is two large a delay: And the Defendant hath not shewed in his Plea any cause sor the justifying of excuse of it and

Ante 28.

dereRentis.

and therefore upon his own thewing we adjudge him to be a bifturber: See 14 H. 7. 22. 15 H. 7.6 and note by Periam, it was adjudged in the Cale of Mollineux, if the Patton prelent, and the Ordinary both refule, he ought to give notice to the perian of the Patron thereof, if he be refinent within the County, and it was a the Church it felf, which is upid.

Land led and frank the Cale has, that one h. alou at Land led and breit all started at 10 th and 22 started at 10 th and breit allowed at 10 th and 10 th

Their againants, 1.8 hp Inventor Country is the Mailentry the their apparants, 1.8 hp Inventor between the affect of the his pact, and himself of the actor part, conting that otherwise the file his to the Queen in cight humber pounds, to be pair of form following them you and at every feat of Sc. Anime, must be founded in a first faith to pounds at every feat of Sc. Anime, must be founded in a first faith to pounds at every feat of Sc. Anime, must be founded in a first faith to pound the Loyd Creaturer, and Savons of the Creaturer, and is view into the Loyd Creaturer, and Savons of the Creaturer, and is view in the fight of the laid laid the creature of the laid savon of the cible operation of it.

Hill. 28 Eliz. In the Kings Bench.

XLI. Taylor and Moores Cafe.

Taylor brought Debt upon an Oligation against Moore, who pleated bed. in Bar, upon which the Plaintiff vid demuces, and the Court a Error warded the Plea in Bar good, upon which Judgment the Plaintiff brought a Write Greet, and affigued Greet in this, that the Bar upon which he had demuced as infulficient, was advanged good: Apon which note in this Write of Greet the Bar was advanced infulficient, and therefore the Judgment reversed But the Court was in a doubt what Judgment half be given in the Cale, viz whether the Plaintiff shall recover his debt and damages, as if he had resovered in the first Action, or that he half be reflected to his fiction only, are Andrewsy tited the Case in 8 E. 4.8. and the Cale of Attaint 18 E. 4.9. And at last it was awarded, that Plaintiff hould recover his best and damages: Dee to that puepete 33 H 6.31. H 7. 12, 20.7. Eliz Dyer 233:

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Hill. 28. Eliz. In the Kings Bench.

XLII. Higham and Harewoods Cafe.

More Rep. 221. 3 Len. 132.

Land where, &c. and also of a Defluage, with which Defluage the land had been usually occupied, time out of mind, &c. and being seiser analying sick, commanded a Derivener to be brought to him, and the said Derivenet being brought to him, he gave him Instructions to make his will, and amongs other things vectored unto him, that his meaning was, that the said Apelluage, and all his Lands in Westerisld should be sold by his Crecutors, and the Sectioner in making of the Westerisld should be sold by his Crecutors, and the Sectioner in making of the Westerisld special ces, shall be sold by my Crecutors, bory view, the Crecutors sell said acres of the said Land to the Destand all this matter was sound by secial verbid, and it was imposed by the Plaintiss Counsel, that the said of this Land by the Crecutors is not warranted by the calli: Another matter was moved, sold admitting that the Crecutors have authority by the calli to sell the Land, if the said of parcel of the Land be good and warrantable: As is I make a Charter of Feosment of ten acres, and a Letter of Attomep to make livery of them to the Feosses, if the Actomey makes several liveries of the several acres the same sound as special Commission, in which the party to whom, and all the other circumstances are set hown certainly, contrary in the Cale at the Bar, there the Commission is general, &c. and peradventure the Crecutors shall never sind a Chapman who will contrar with them so, the whole. And afterwards whom conference amongs the Judges, Clench, Gawdy, and West, it was besided, that hy this perife the Lands to not set of the call the party of them so not should be conference. 132 an Ejectione firme the Cale was, that one Butry was lefter of ithe More Rep. 222 thall never find a Chapman who will contract with them for the whole. And afterwards whon conference amongs the Judges, Clench, Gawdy, and Wray, it was telulord, that by this devise the Lands do pals by the sale of the Etecutors to the Defendant, which sale also by process is twattanted by the Atill, for by Wray, these words, with all the appurtenances are effected and emphatical words to ensure the devise, and that both extend to all the Lands especially; because it is found, that the Testator gave to the Activener his Instructions accordingly: And afterwards Judgment was given against the Plaintiff. See 3 Eliz. Plowd, 210. Betwirt Sanders and Freeman, there the Devise is pleaded in this manner, Messagium cum pertinentis ad illud spectantibus in perpetuum-in villa de Arthingworth.

More Rep. 222.

Trin. 28 Eliz. In the Kings Bench.

XLIII. Watkins and Astwicks Cafe.

1 Cro. 132.

12 an Ejectione firme, it was found by special berbict, that one Maynard mas leised, and made a feofiment in fee upon condition of papuration of many on the part of the feoffoz by way of Hoztgage at a cermin day, befoze which day the laid Maynard dped, his Son and Deir be-Tender to re- true within age, afterwards at the day of papment limited by the Mortdeem a Mort- true, a ftranger at the inflance and request of the Morther of the Deir
eage tended the money to the Mortgagee in the name of the Deir being
mithin age, who refused it. And it was resolved by the whole Court,
that the same is not a sufficient tender to reveem the Land, according to the Dortgage, for it is found by the Jury, that the Deir at the time of the tender was within age, generally, not particularly of fir of ten pears, &c. then it might well stand with the verdice, that the Deir at such time was of the age of 18 02 19 years, at which age he is hy the Law out of the Ward of his Dotber, or any other prochem any, in which Cate

Case it is presumed in Law, that he hath discretion to govern his own affairs: and in this Case the Wother is but a firanger, for the Law hath effranged the Wother from the government of the Heir; but if the Jury had found that the Heir at the time of the tender was of tender age, viz. within the age of fourteen years, in which Case by Law he ought to be in Ward, in such Case the tender had been god.

Trin. 28: Eliz. In the Hings Bench.

XLIV. Leput and Wroths Cafe.

Replevin by Lepur against Wroth, and Declared upon a tortious 6 Co. 31. A taking in Burnham in the County of Essex; the Case upon the Replevin. pleading was, that Robert Carl of Sussex was seised of the Manoz of i Len. 132. Burnham in fee, and leased the same to the King for one and twenty pears, and afterwards the said Earl vied, by which the said Panor descended to Thomas late Earl of Sussex, and he being seised, 4 and 5 Phil. and Mary it was Enaced by Parliament, That the Lady Frances, Wife of the faid Earl, by virtue of the faid Ac of Parliament found have, hold and enjoy, &c. during the widowhood of the laid Frances, for and in consideration of the Normute of the said Frances the said Manor: Provided always, and it is further enacted, That it should be Construction lawful for the said Earl, by his writing indented, dimissionem vel digniff of Statume. Since facere pro termino 21. annorum vel infra de codem Manerio pro aliquo reading annuali, ita quod fuper omnes & fingulos hujufmodi dimiffionem & dimiffiones antiquus redditus & consuetus vel eo major & amplior reservaretur; and that every such demisse should be of soce, and essectualin Lawagainst the said Frances soz term of her life, if the said term should so long continue: And further the said Act gave to the said Frances, Distress, Avoncy, Covernications nant,&c. against such Tessee, and for the said Lessee against the said Dame; And afterwards the said Thomas, the said sommer Tease not expired, leased the said Hand to Wroth the Desendant so one and twenty years, to begin at the Feast of Saint Michael next following (and note the Tease was made the third of April before) rendring three bundgeb and forty pounds per annum, which was redditus amplior antiquo & usuali. Popham Attorney general argued, that the said Lease of not bind the said Lady Frances, and that for two Caules: 1. because it is to begin at a day to come: 2. because it was made, a sozmer Lease being in esseand he argued much upon construction of Statutes to be made not accozding to the letter, but according to the meaning of them: And hecited a Case upon the Statute of 2 H 5.3 by which it is Chacted, that in no Action in which the vamages do amount to forty marks, any perfon should be admitted to pals in trayl of it, who had not Lands of Tenements of the clear yearly value of forty shillings, yet the laid Statute thall not be by confirmation extended, where in an Action between an English-main and an Alien, the Alien property medicatem lingua; and yet the Statute is general. So in our Case, although this private Act doth not feem to provide expectly but for two things: 1. the number of the years, 21, & non ultra: another to think that the intent of in reason and good underkanding we ought to think, that the suteris of the act was, that the said Danoz should now come to the said Lady Fraces surcharged with Leases in Reversion, or to begin at a day to come, for if by this Act the said Carl might make a Lease to begin three months after, by the same reason he might make a Lease to begin twenty years after, and also to begin after his death. It hath been objected, that the Lord Creaturer had a Commission to make Leastes of the Queens Lands, and that by virtue thereof he made Leastes in Aeversion: I know the contrary to that, for every such Leastes allowed by a Bill assigned, and not by the ordinary Commission afore-

faid, the words of our Act ate, Dimissiones facere pro termino 21. annorum, that shall be meant to begin presently: As if I lease to you my Lands for one and twenty years, it hall be intended to begin presently; and be cited the Case betwirt fox and Collier upon the Statute of I Eliz. he cited the Cale betwirt Fox and Collier upon the Statute of 1 Eliz. cencerning Teales made by Bishops That four years of a former Lease being in being, the Bishop leased for one and twenty years, the same was a good lease, notwithstanding the former lease, for the lease began presently betwirt the parties. And it hath been adjudged, that a lease for years by a Bishop, to begin at a day to come, is utterly boid. And he cited the Case of the late Parquess of Northampton, who by such an Act of Parliament as ours was enabled to make leases of the Lands of his Chife for one and twenty years, and of the said Lands an ancient lease was made before the said Act, which was in essential to commence after the expiration of the said Act, which was in essential was allowed to be a good lease warranted by the said Statute, because that the sirst lease, which was in essential bat the sirst lease, which was in essential by the said Statute, because that the sirst lease, which was in essential by the said Statute, because that the sirst lease, which was in essential by the said Statute, because that the sirst lease, which was in essential by the said Statute, because that the sirst lease former lease had been made by virtue of the said Statute, the second lease had been utterly boid. Statute, the fecond leafe had been utterly boid.

#### XLV. Trin. 28 Eliz. In the Kings Bench.

Copy-hold. Surrender by Attorney not

A Copy holder of the Manoz of the Carl of Arrundel did furrender his customary Lands to theule of his last Chill, and thereby deviced the Lands to his youngest Son and his Deirs, and died, the viled the Lands to his youngelf. Son and his Heirs, and died, the youngelf Son being in pillon makes a Letter of Attoiney to one to be admitted to the Land in the Lords Court in his room, and also after admittance to surrender the lame to the use of B. and his heirs, to whom he had sold it for the payment of his debts: And Wray was of opinion, that it was a good surrender the Attoiney, but Gawdy and Clench contrary: and by Gawdy; If he who ought to surrender cannot come in Court to surrender in person, the Lord of the Manor may appoint a special Steward to go to the pillon and take the surrender, &c. and by Clench; Lesse for years cannot surrender by Attoiney, but he may make a deed purporting a surrender, and a letter of Attoiney to another to deliver it. another to deliver it.

3 Cro. 218. 9 Ca. 75.

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Trin. 28 Eliz. In the Kings Bench.

XLVI. Troublefield and Troublefields Cafe.

Dy. 337.b.
Co. 1 last. 15.

The Cale was, that a Copy holder dividurement to the use of his contact to the use of his contact to the cale was, that a Copy holder dividurement to the use of his contact to the cale the contact to the 

# Trin. 28 Eliz. In the Kings Bench.

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#### XLVII. Parmort and Griffina's Cafe.

The Debt upon in Obligation by Parmore against Griffina a Metchant Debt. stranget, the Defendant pleaded, that the Obligation was made upon condition for the performance of certain Covenants contained within certain Indentures, and thewed what, &c. and alledged further, that in the faid Indenture there is a provide, that if aliqua lis, vel controverlia oriator imposterum, by reason of any clause, article; or other agreement in the said Indenture contained, that then, before any sute there upon attempted the parties shall choose four indifferent persons sor the endling thereof, which being done, the Indenture and Obligation shall be possessed for the that I is be vold: And in fact laith, that Lis & controversa, upon which the Action is brought, groweth upon the said Indenture, upon which there was a denuirrer in Law. And because the Defendant hath not shewed specially upon what acticle certain: craip upon what controverue of firite, and upon what article certain:

The Court was clear of opinion, that the Bat was not good: And also the Court was of opinion, that the last Proviso of not extend to sub-Proviso taken ied and fixinit the breach of every Tovenant of Article within the last fixing. Inventure to the Arbitrament of the said four persons, but only where strike and controverse dotharise upon the construction of any Covenant, excusting the said Indenture so as the Defendant ought to have here to such matter which fell within the Arbitrament, by the meaning of the said Indentures and Judgment was given against the Defendant.

# 201 20 5 11 11 Mich. 28, & 29. Eliz. In the Common Please of 2010

# \*10 3 of 3 1 1 XLVIII. Partridge and Partridges Cufe. 413

Is Dower by Partidge against Partidge, the Cale was that Landwas Down.

A niven to the father for life, the reversion to his Son and Beit for life, the remainder to the right Peirs of the body of the Pather. The Father are seamed in a feofinient to the Clinie in fee, father meth, the Souther of the Father. The Clinic at the clinic in the line takes a wife, the father meth, the Son he my his dens in tall, the Unite vieth without lifue, to as the Landwell manually to the Son, as Heit ohis Antle, against whom the Clinic at any his father, and dens allo to his Clutle, for the fee delicences, de now remarked for them no Dower acceused to the fee delicences, de now remarked for them no Dower acceused to the fee delicences, de now remarked for them no Dower acceused to the fee that it the feeth multiple like Son topied with his father be the linear of the lands in the lands of the Lands in the lands in the lands of the Lands in the court however, if the result he manually her Dower lands in the Court bowdred, if it were the linear of the Son or not. And the Court bowdred, if it were the linear of the Son or not. And the Court bowdred, if it were the linear of the Son or not. And the Court bowdred, if it were the linear of the Son or not. And the Court bowdred, if it were the linear of the Son or not. And the Court bowdred, if it were the linear of the Son or not. And the Lands is the Court bowdred, if it were the linear of the Son or not. And the Court bowdred, if it were the linear of the Son or not. And the Court bowdred, if it were the linear of the Son or not. And the Court bowdred is the son or not. And the court bowdred is the son or not.

pleasing.

#### eine in beiter in eine Lieben 28 82 29 Eliz. In the Exence of Brons dated min alles

# Myorg XIIX The Queen against the Lord Yaux and others. 3151

A Bill of Intrulion was brought for the Queen against the Lord Intrusion.

A Vaux, Rich Vaux, tHen Vaux supposing to have intruded into the Recurrence of Etheleorough in the Country of Northampton, their Ale of the Court, by the Stante of ich 6. and igeretoge in dufferte for ihr Dierren to fein, that the College was the college was

Feundation

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Colledge in Reputation.

General pleading

ed that in the time of Hen. the fourth, the College of Saint Peter of Ethelborough was founded at Westminster, in the County of Midd by the name of Decani & capituli; and shewed surther, that the Rectory of Ethelborough, was appropriated to the laid Colledge, and that afterwards by the Statute of 1 E. 6. the laid Colledge was diffolived, and the laid Rectozy, amongst other possessions of the said Colledge, came to the hands of the king, and that the Desendants, 1. Eliz. intruded into the said Rectozy, and took one thousand Sheep, one thousand Calves, and one thousand Loads of Cozn, bons & carella dicke Doming Regime provening entia ex decimis rectorize predict, apud Westm. predict. The Desendants pleads ed, &c. That the laid Colleage of Ethelborough was founded in Ethelborough, &c. per nomen Decani, canonicorum, & fratrum, &c. who leafed the faith Rectory to appropriated to one Clark for forty fix years, in Anno 30 H.S. who alligned the same to the Defendants, by force of which they justified the taking at Ethelborough, absque hoc, that the said Colledge of Saint Peter in Ethelborough, was founded, per nomen Decani & capituli Ecclesia Sancti Petri de Ethelborough, at Westminster associately & absque hoc, that they took the said Sheep, &c. at Westminster, &c. (Ipan which the Queens Attorny did demur in Law. Manwood chief Baron argued; that Audgment ought to be given so; the Queen: Exception hat been that Audgment ought to be given for the Queen: Exception hath been taken to the Information, because mention is made in it of a Colledge, and it is not hewed what person was the Founder: And also an appropriation is alteadged of the Actory aforesaid to the said Colledge, and the Appropriation is not spewed certain, who was Patron, Ordinary, see, as to that he argued that the alledging of the Appropriation and foundation, is but matter of surplusage, and therefore the insufficiency of alledging the same shall not prejudice the Queen, for it had been sufficient to say. Chat the said Colledge of St. Peter, was selled of the Rectory aforesaid, and then to shew the Statute of Chauntries, i. E. 6. and the same is a good title softhe Queen, The possession of the Colledge, and the Ossion of it by the Statute i. For this Bill of introduce, and the Ossion of it by the Statute i. For this Bill of introduced is but in the Patruce of a possessor action, as an action of Tree trulion is but in the Mature of a pollellopy action, as an action of Trespals, in which case it is sufficient to make title to the polletion and without relying upon the right; but as to the curious and erac pleas. ing of an appropriation, or a foundation, it needs not in this cale; for about that the colledge were not well and bulp founded, per furt pleaving is lufficient, for a Colledge in Aeputation is within the Statute of 1 E.6. and where the party claims by or under fuch foundation, there the foundation ought to be certainly shewed, not precisely tion, there the foundation ought to be certainly hemed, not precised but conveniently, not as we plead a commonike covery, but as ine plead the creation of a Bishop, feiled bits mode prefectus, without the wing the particulars of the creation, so if an Abbot will plead in discharge of his hands of a Coroby, he ought to shew the foundation, and convenient settainty, which fee L.5.E.4.118. Robert Milamfounded the Abby of Leiches, and convered the right of Patronage and founder this to the ising he attainder, and the lame many good pleading, without shewing the part, that so it the foundation specially, so 3 H.7.6 in the Case of the Bridge of Norwich, the pleading is, quad Prioratus de Norwich est de finderious Roscopogum Norwich, so in such case, on refere quis sir Fundor, so the King be une founder; but in our case, non refere quis sir Fundor, so the Statute in both der. whether the King, on a Subject, all is one, the Statute in both bet, whether the king, or a Subsect, all is one, the Statute in both Cales gives the possessions to the king: And as to the case of Appropriation, the pleading thereof is well, if it be conveniently shewed, in case where the party who shews it claimes by such Appropriation, as 6 H. 7. 14. 11. H. 7. 8. Concurrentibus his que de jure, &c. without shewing the particulars of the Appropriation. Row in our case, the Queen is meetly a stranger to this Appropriation, and she both not claim by it, but the possession of the College is the ritle of the Queen, by the Statute of 1. E. 6. and therefore it sufficient for the Queen to shew that the College mas series, &c. it fufficeth for the Queen to thew that the Colledge was leifed, &c.

without making mention of the manner of the Appropriation: And as to the tradecte of the County, be conceived, that the County is not tradectable in this cale, for when the Cithes are levered from the nine parts, they are prefearly versed in the party who hath right, and travele they are things transitory, and also the taking of them, for the party map take form in any place as well as in his own Parish, told as well at Welkingher, loghere the Alucen suppose the taking, as a Ethelborough where the Defendant both mistip, &c. and in such cases the place where is not tradectable. See y H. 6. 62, 63, by Babington, 35 H. 6. 5.

An Trebals of Goods taken in the Parish of Daint Clement, in the County of Midathe Defendant bid until by duying in open Market in the County of Midathe Defendant bid until by duying in open Market in the County of Edex, there needs no traveries, for the Defendant hath made title by an open Market, 34 H. 6. 15, 16, In Crespals of Battery at Din the County of Edex, the Defendant pleaded, that the Plaintiff made an assault upon him at B. in the County of Kens, and the Defendant sed, and the Defendant sed, and the Plaintiff pursued him continually unto D. a forefald, at which place the Defendant and defend himself, and be the Defendant sed, and the Plaintiff by was of his own assault, and demanded Judgment is Assaultery may be continued from one County to another. And it was observed by Manwood in citing of that case, that after which he had so the County for a Battery may be continued from Bike into Kens, decante the Kiber of Thomas is between the County, the Defendant at loodon, by spece of thick in the County of Kens, and the County of the Defendant of loodon, by spece of which he took them at Coventy, the Defendant at loodon, by spece of which he took them at Coventy, and that traverte not holden good, so the Defendant of the defendant had believed them over to A. by some land of t without making mention of the manner of the Appropriation: And as ed by the Declaration, for by his Plea he hath confessed an immediate delibery of the sald goods to him by the Plaintiss and the delibery and the taking all at one time and at one place, and it had not been a good plea for the Desendant to say, that the Plaintist delibered to him the laid goods at London, by force of which he took them at Coventry, for the nosession is confessed in the Fred Relibert of the goods at London. polletion is confested by the first delivery of the goods at London; and the Appolal of the Plaintist of a taking in Coventry, and the justifica-tion of the Defendant of a taking by reason of a delivery at London, cannot stand together. But if the Defendant plead, that the Plaintist cannot frand together. But if the Defendant plead, that the Plaintiff gave to him the goods in London, by force of which he took them there, there he may take traverse to the place supposed by the Declaration, for by the gift it is sawful to the Defendant to take the goods in any place. So see 19 H. 6.35. In saile Imprisonment supposed in the County of W. the Desendant both justify as Speriss of the County of B. by some of a Write to him directed to attach the Plaintiff, and so he attached him and imprisoned him at C. In the County of B. there the Desendant tradersed the County supposed by the Declaration, for otherwise he both not meet with the Plaintiff, and the authority of the Desendant both not meet with the Plaintiff, and the authority of the Desendant both not extend to the County supposed by the Declaration. See also to the same purpose 22 E. 4.39. by Hussy, where the difference is taken when justification is by reason of a Warrant to take goods in any place whatsoever, and where in a place certain, as to the traverse of the Foundation, absoluted precise. Collegium sundatum suit per nomen Decani, & Capituli Ecclesia collegiate Sancti Petri de Ethelborough apud Westm. he hath yere

here traverled that which was not alledged, for the placing of the land mores of the traverle, sil. apud Wedmialt. In the end of the traverle feems by common conficuation to be intended thereby, that there is no flich Colledge at Wedmi. and not that the Colledge mas not founded at Wedmi. for then the traverle hould be about hosquid collegism prediction fundatum fuit at Wedminster, per nomen, &c. But the independent reporter, about the Corporation mentioned in the Bill, and that which is non-some in the Bill, and that which is non-some in the Dean, are not all one, but where in this manner, sea in the Bill the Dean, and there is the there are two first the Dean, Cannons, and Bretheren, and perhaps there are two first Corporations, and then both cannot be selled, and therefore upon the sellin of one of them, the traverse shall be taken-and afterward Judgment was given to the Dean, the traverse shall be taken-and afterward Judgment was given to the Dean to the Dean to the content.

Mich. 28 & 29. Eliz. In the Common Pleas.

L. The Queen, against the Bishop of London, and Scot.

Quare Impedit. 3 Len. 175.

The Queen brought a Ovare impedicagainst the Bishap of London, and Sox, and the Case was, that A selsed of an Addiction in gross, bottoen of the Queen in chief, aliened the same by fine without Accence; the Church became botd, the Counse presented. The Queen muchout office found, house presents in it was argued by the whole Court, that if the Alienation had been by Deed only, that there the Gueen without office found sould not bake had the presentment, for mon such an Alienation by matter in sac, without Licence no Soire sais house sallienation by matter in sac, without Licence no Soire sais sound stille without office sound of the Alienation, but upon an Alienation without Licence by matter of Record, a Soire sais speth before office, which was granted by the whole Court: And in the last catethe Queen shall have the mean profits from the time of the Soire sciencestures, but in the first case from the time of the soire for the Soire sciences and Prerogative, sol. penult. 8 E. 44 It was also mobed, if the Gueen instituled to the presentment as above, pardoneth to the Conuse off disentions without Licence, and Antrusions, if the efface of the Incumbent be thereby confirmed, but the Court would not argue that point; but it was adjoined until another day. but it was adjoined until another dap.

Scire facias.

Mich. 28 & 29. Eliz. In the Common Pleas.

LI. Braybrooks Cafe.

Pines lovyed.

The Cale of one Braybrook loas modes, which was. Land has given to A. for life, the Remainder to B. for life, the Remainder to the laid Braybrook in Fee: B. being in polletion ledged a fine to it framer, for condans de droit come ceo &c. A. dred, if noto Braybrook might enter to the forfeiture was the question: And it was agreed by the whole Court, that by that fine the Remainder in fee is not touched, or his continued, but because B. had done as much as in him lay for the mipoling of fee-simple by the fine, and bath taken that upon him, the same amounts to a forfeiture: And it was also agreed by Agacido and Perium, that if Cenant for life in possession is beyond a fine, see if the Lesson both not enter within side years after, he shall be bounden: Windham contrary, for by him it is in the election of the Lesson to re-enter immediatly for the forfeiture, of to expect the beath of the Lesse.

Mich.

Co. 1 Inft. 251, b. 252.2 Forfeiture. 9 Ca. 104. Poft. 211,212 1 Cro, 219, 120.

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# Mich. 18, & 19 Elt. In the Exchequer Chamber

LIL Wilflialge and Davidges Cafe.

Militaige brought Cerror in the Extinemer Chainfier, whan he know Starte or 17 Elds. Cap. 8 against Davioge) upon a histografier with the Raine Dough, fall as knew and allowed the corrol that best Davioge but betterious blongs. Determined the note Plainting, to bettered upon dipert Contrary, ed. that he and and to withing to Berchantizer to la many Portugues, and that West handles of the many Dought, but he contrary and the descriptions of the formation of the Contrary, fail in Section and the Decirc action of Dought of the Contrary are selected to the Contrary of the Court grave Indignation of the Section of the Court grave Indignation (co. 516.) The Plainting, for it is in big election to bettermined the Best in adjust 136. the Plainting, for it is in big election to be manual first best in adjust 136. thouse Courte he plainting, for it is in big election to be manual first best in adjust 136. was aniemeb.

Mich. 28, & 19 Eliz. In the Exchequet.

LIII Henly and Broads Cafe.

LM Henly and Broads Case.

I Tenly biscopif Teelbook against broad fir the Minus Boney, and the presence, that the last Declaration for the tent present of the last Declaration for the Plaintiff, and it was followed to There and it was found for the Plaintiff, and it was objected in fluor of Minus and it was found for the Plaintiff burnies, that the Court was not good, for it appeared therein, and the thanking of the Plaintiff burnies, that the Case, and because the linux appears of the Plaintiff court named in the Case, and because the linux appears of the Plaintiff court named in the Case, and because the linux appears of the Plaintiff court named in the Case, and because the linux appears of the Plaintiff court which droot hought a Case of Case, and alliqued the land enter after that a Case, and alliqued the land waster for the case, where the Plaintiff ductores is taken, where the Plaintiff ductores, that the Declaration was not because the Lectures of the common places, and Barries of the Case and the Lectures, that the Declaration is that the Lectures of the common places, and Barries of the Case and the Declaration was not good, so the reason, appropriate that the Case, so as much as the waster been amended and the Plaintiff ductored in an the plaintiff tradecte the Release, in that case, so as much as the waster been always upon the Plaintiff ductored in an the part of the Betendant, and not bening by him, the Duclaration and the best after account in the part of the Betendant, and not bening hip him, the Duclaration and soften after account in the best ductored in his declaration in a concern fulficate but only topic. And if the Accided after account is being by the best agreed by the Beter and only the Betatics of 18 Eight both hat concern fulficate but only topic. And after a decrease of the country the betatics of 18 Eight by the Betatics was afterned.

Mich. 28, & 29 Eliz. In the Common Pleas.

LIV. Wood and Fofters Cafe:

Replevin. Owen Rep. 1 39. Godbolt 113.

Wood brought a Replevin against Humfrey Foster and others, and made his plaint of the taking of one thousand Cattle; Foster pleaded, Non cept, and the others, that the property was in another; upon which matters they were at issue. And as unto the first issue, the case upon the Evidence was: that the late Lojd Windsore was possessed of certain Speep, and by his will devised them unto Eliz his Daughter for her advancement in marriage, and of his Califf made his Wise his Crecutric, and view, his Calife took to her bushand one Puttenham, who being thus possessed leased the said Sheep with a Farm sozeleven years by Indenture, upon which it was agreed between the said parties, that the Lesse should keep so much of the Rent reserved upon the said Lease, to buy therewith so many Cattle over, so as the whole stock of the said Sheep upon the said Farm should amount to the number of one thousand Cattle; and the Lesse also covenanted to yeild and render to the said Puttenham at the end of the said Cerm one thousand Sheep between two years shown, and sour years showne. Afterwards Puttenham between two years hozne, and four years hozne. Afterwards Puttenham' by his deed gave unto one A. who had married the laid Eliz. the laid one thouland Cattle, to have them after the laid Cerm; the Cerm expireds Puttenham lold and granted them unto Wood, who brought them away with him. And the laid A pretending that the laid Sheep palled to him by the laid grant of Puttenham during the laid Term, and the same was noceanter as they were driven in the high way, under magna contentio ora suit between the said parties, the one charging the other with selony, whereupon the Constable of the Cown where, &c. supposing the said matter would grow to an Dutrage, seised the said Cartle as selong goods, and asterwards went to the house of the said Easter which man near unto the high way and active to the house of the said Foster, which was near unto the high way, and asked his advice upon the matter, but he would not meddle therewith: Afterwards one Perkins, who had bought the faid Cattle of the laid A. came to Foster, and shewed to him, that the high-ways there were not fufficient for patturage of the late Cattle until the faid controverly be betermined, and prayed that the Cattle be delivered to him the faid Perkins to keep in the mean time; to whom Foster answered, that if the said Perkins would find sufficient sureties to deliver back the Cattle to him who had right, that he would be content the said Perkins should take them; whereupon the said Perkins was content the latd Perkins hould take them; whereupon the latd Perkins was bound to Folker to that purpole, and took away with him the latd Cattle; And it was also given in Evidence, that the servants of the said Fosker had sersed the Cattle for the use of their Hallet. And by the clear opinion of the Court upon the whole matter shewed. Fosker non cepk, and according to such direction of the Court the Jury found, that Fosker non cepk; and as to the matter of property, the Court was clear of opinion, that the grant made by Puttenham of the said Cattle, during the Cerm, was utterly both, for Puttenham during the same Cerm had not sin the said Cattle either a general or a special property, nor also after the Cerm; but is after the Cerm expired the Lessee will not according so his covenant deliver to Puttenham one thousand Sheep, then Puttenham is put to his Action of covenant, so here the Lessee was bound to deliver to Puthis Action of covenant, forhere the Lessee was bound to veliver to Puttenham at the end of the Term, not the same Cattle which were leased, but such a number of Sheep, and the same ought to be between two years shorne, and sour years shorne, which could not be the Sheep demiled, for they did exceed such degree before the end of the laid term, & then the grant of Puttenham during the Cerm is meerly boid: and then when after the Term, the Teffee, according to the covenant, delivered to Wood one thousand Speep, he might well sell them to the Plaintiff;

And fuch was the opinion of the whole Court; and it was faid by Justice Windham, that if I let certain Sheep to one for two years, now upon Property. Windham, that if I let certain Sheep to one for two years, now upon that Lease somewhat remains in me, but that cannot be properly said a Property, but rather the possibility of a Property which cannot be granted over. See 11 H.4.177.178.22 E.4.10.11. In the same plea it was also holden, that in a Aeplevin where the plaint is of one thousand Beasts, and the Defendant justifies by reason of property, upon which the parties are at issue; Now upon the Evidence the Defendant may surmise a lesser number of Beasts, and drive the Plaintist to prove a greater number than that which the Defendant hath confessed upon the Evidence; Notwithsanding that the number set down in the plaint he by the plea of the Defendant guodam mode admitted, and the lesser be by the plea of the Defendant quodam modo admitted, and the leffer number firmiled, and the contrary not proved thall go in mitigation of the damages, and the Jury thall conform their verdict in the right of damages, and the July wan contour their vector in the tight of damages, according to the proof of the number, notwithstanding that the number set forth in the plaint be not by the Pleadenied by the Defendant, and so it was put in ure in this Tale: for the Plaint was of the taking of one thousand Tattle, but the proof extended but to eight hundred sixty sive. Note also in the same Plea it was holden, that whereas one Chock was returned upon several Juries in two several Tourts at Westminker, and both the Juries are adjourned to one day; now in which of the said two Courts the said Chock was sworn, be shall be discharged of his attendance at the other of ourt the same day. charged of his attendance at the other Court the same dap.

Mich. 28, & 29 Eliz. In the Common Pleas.

#### LV. Carters Cale.

Arter brought an Action upon the Cale against Is and beclared that Assumption A. was possessed of certain Lands for years, the Inheritance thereor being in the Wife of the Plaintiff, upon which Leafe a Rent was referbed: The Defendant, in consideration that the Plaintiff would procure the laid A. to assign the laid Leale to the Defendant promised to pay the laid Aent to the Plaintissfor all the relidue of the Cerm: It was objected that upon this matter the Acion doth not lie, because that the Plaintiss hath a higher remedy, scil. an Acion of Debt or Distress, but the opinion of the whole Court was that the Acion doin ie, for here upon the promise an Action is given to the Husband alone in his own right, whereas the Bent is due to the Husband in the right of his calife in its nature, and the Aent is also to be paid for the Land. But upon this Assumpte it is payable to the person of the Husband. And afterwards Judgment was given for the Plaintiff.

Mich. 28, & 29 Eliz. In the Common Pleas.

LVI. Kimpton, and Bellamyes Cafe.

Eorge Kimpton brought a Replevin against Wood and Bellamy, who I make Conulance as Baylies to George Burgain foz Damage Fea. Repleria fance. The Plaintiff in Bar of the Conusance, theweth; That he himself, and all those whose estate he bath in one hundred and forty Acres of Land time out of mind, &c. have had common for all manner of Cattle in fix Acres of Lands, whereof the place where, &c. is parcel, and so put in his Cattle, &c. against which, the Defendants say that the Plaintiff, &c. had common in forty Acres of Land, whereof the faid fix A. cres are parcel, all lying in Communi campo, and that the Plaintist, a long time befoze the taking, had purchased two Acres parcel of the said forty Acres, &c. upon which there was a demurrer in Law; It

Traverse.

It was argued by Serieant Shutleworth, that the Replication to the Bar to the avowy is not good, for in the Bar to the Avowy, the Plaintist hath shewed, that he hath common in six acres, and the same shall be intended common in six acres only, forcommon in forty acres cannot be the common in six acres; as 35 H. 6.38. In Debt for Rent referbed upon a Lease for years, the Plaintist declared that he leased to the Defendant ten acres of Land, rendring the Rent in demand, the Defendant pleaded, that the Plaintist leased to him the said ten acres, and also such a Becroy, rendring the same sent, the same is no plea without traverse, absque hoc, that he leased the ten acres only: See Dyer 29 H. 8.32. And the whole Court was clear of opinion, that so want of such traverse, the plea is not good; for by Periam the Common supposed in the bar to the Conusans out of the six acres, cannot be intended the Common supposed in the Aeplication, sail out of the sorty acres, and by him if in Crespass the Desendant suffice by reason of Common in six acres of Land, upon which the parties are at issue; and the Desembant in Editence shews, that he hath common in forty acres, where of the said it acres are parcel, the same both not maintain his title, but the said that defend of pleading, so the want of the Craverse, and that hy reason of the Satute of 27 Eliz. For Craverse is but matter of form, and the want of the Satute of 27 Eliz. For Craverse is but matter of form, and the want of the Satute of 27 Eliz. For Craverse is but matter of form, and the want of the Satute of 27 Eliz. For Craverse is but matter of form, and the manner and some of the pleading; and as to the matter of the Common, the Court was clear of opinion, that by the purchase of the said two acres, the whole Common was gone.

Extinguish.

Poft 80, 81.

Mich. 28, & 29 Eliz. In the Common Pleas.

LVII. Knights Case.

Debt.

Abatement of

Night brought Debt against three Erecutors, and now surmised by his Counsel, that one of the Erecutors is dead, pendant the currit; and prayed the opinion of the Court, if the Writ should thereby abate or not; for by some it is not like where a Writ is brought against two Erecutors, for there if any of them dieth, pendant the Writ, it shall abate, for now the plural number is gone, for there is but one Erecutor, but in our Case the plural number continues: But notwithstailing that, the Court was clear of opinion, that the Writ should abate: Wherefore the Plaintist seeing the opinion of the Court, prayed that upon his surmise aforesaid, he might have a new Writ by Journeys Accounts, which was granted to him.

Mich. 28, & 29 Eliz. In the Common Pleas.

The Queen and Middletons Cafe.

Quare Imped.

The Queen brought a Quare Impedit against Middleton, and counted, that W. Lord Say was seised of the Panor of Bedington in the Country of Heriford, to which Panor the advowing of the Church was appendent, & ad Ecclesiam prædict. præsentavit Coo Clericum suum, and afterwards died seised, having issue two Daughters, Mary married to the Earl of Essex and Ann to the Lord Mountjoy, who make partition, and the sath Panor of Bedington, interalia, was allotted to the sath Mary sor her part; and afterwards the sath Earl and Mary view, having issue Ann, who took to Husband the Parquess of Northampton, and afterwards 33 H. 8. a fine was seved of the sath Panor inter &c. Querent and the sath Marquess and Ann Desor

ceants, by which fine the lato Manoz was granted and rendred to the lato Parquels for term of his life, the remainder to the faid Ann his Mife in tail, the remainder over to Hen, the eighth in fee; the Marquels is attainted of bigh Trealon, by which the king leifed, and atterwards And died without issue, after which in the seight of the Queen that now is the Thurch voided, by which it belonged to the Queen oppelent; The Defendant our confess the seisin of the Lord Say, and the whole water contained in the County which it because who have the contained in the County which it because where whole matter contained in the Count until the Attainder; and pleaded further, that after the laid Attainder Queen Mary lealed the laid Mandy with the advocation to Rockester and Walgrave for forty years, if the laid Marquels should so long live, who were posselled accordingly, and in their possession the Church became boid, to which Abostonice one Twiniko did prefent the Defendant, who upon his prefentment was instituted and induced: Apon which Piea the Queens Serieant did demur in Law. It was argued by Serieant Shueleworth for the Queen, That the counterpleading of the title of the Queen by the Accumbent, without thewing title in his own Patron could not be god, nothwithflanding the Statute of 25 E.3. Cape, before which Statute, the Incumbent could not plead any matter which went to the chique of the Patronage, but only in difference are except of the Picture and therefore the queen to allege the charge of excule of the diffurbance, and therefore we ought to observe the words of the laid Statute, so the possessor shall be received to counter-plead the Kings title, and to have his Answer, and to desend his Kight upon the matter, although he claim nothing in the Patronage, upon all which words taken together it appeareth, that the Incumbent ought not only to counter pleed the title of the King, but also to thew and defend his own right, and that hath not the Defendant done here; For Twiniko, of whose presentment he is in the Church, doth not claim under the lease made by Queen Mary to Rochester and Walgrave, but during their said Aease and their possession of it, by usurpation presented the Church and Capital Country of the constant of the constant of the constant of the country of the constant of the country of the constant fented the Defendant, 46 E.3.13. by Finchden, The King brought a Scire fac. upon a Necovery in a QuareImpedit, the Defendant being Incumbent pleaded, that after the faid Judgment the King had prefented to the faid Church I.S. his Cierk, who was admitted accordingly; and exception was taken because the Defendant did not show a title in himself to maintain his possession, but it was not allowed; for a difference is taken betwirt a Plea in a Quare Impedit, and a Plea in a Scire facias, for in a Scire Where in facias it is sufficient to extort the Plaintiss of execution without any tis pleading the contrary in a Quare impedit. And it is a general Aule, that in all Cas party must less where an Office is to be troversed, none shall be received to tras make title to verle the title of the King, without making a title to himfelf, which himfelf. fee 38 E 3.18. Soin the Cale of the Lady Wingfield, 3 H.7.14. and Stamford 63,64. And it is true in Actions real it is fufficient to traverse the title of the Demandant, without making title to the Cenant himself: As in a Formedon, Ne dona pas; But in Actions personal it is otherwise, as 2 H.4,14 In Ravichment of Ward, it is not fufficient to traverse the title of the Plaintiss, but the Desendant ought also to make title to himself. Fenier Scrieant contrary: who took exception to the Wift; i.e., 50: because it is brought against the Incumbent only without naming the Patron of Ordinary: For here the Desendant hath pleaded, that he is Parlon impersuree of the Church asociate of the presentant of the fald Twiniko, and that he is admitted inflituted and inducted, and bath continued in his Church to many days and years, in which Cale the Calit ought to have been brought as well against the Patron and Dedinary, as against him the Incumbent: But in some Cales it is sufficient against the Incumbent only, as upon a Collation by Laple, 9 H. 6. 32. by Babbington: So where the Defendant is disturber without any presentment, 7 H. 4. 93. so inhere the Desendant was deprived, and kept himself in 4 E. 4. 18. So inhere the Pope makes Prophison, 11 H. 4. Quare Impedit 120. So a Scire facial upon a second

perp in a Quare Imped. shall be brought against the Incumbent only 1 H.

5.8. for by the Audyment in the Quare impedic, the right of the Patronage is bounds and the Scire facias is only for the possession, which concerns the Defendant only, and no other. And to prove that by the Common Law, a Quare Impedictally not (but upon such special matter) against the Incumbent alone, it is clear upon the said Statute of 25 E. 3. For before the said Statute the Incumbent could not plead any matter which did trench to the right of the Patronage, and therefore we ought not to presume that the common Law was so unreasonable to give an Action against a singular person, who could not by the Law shew and desired his own right, not traverse the right of the other patry: And as to the plea bere, he conceived that the same plea which the Patron might have now after the Statute of 25 E.3 the Incumbent shall have; but he who is only a disturber not in by presentment, &c. he shall not plead any matter but in discharge or excuse of the bissurbance, 47 E.3.

5. The king in a Quare Impedic counted, That king H. was seised, and presented one A. king H. died, and the Addown bescended to king E.3. A died, the now king presented B. and now B. is dead, of it belongs to the king to present; that the Defendant being Incumbent traderse the institution and induction of B. without making title to himself. So 44 E. 3. 19. In a Quare Impedic the Ming deplement was received, &c. B. bied, by which it belonged to the Ming to present them for sing Incumbent pleaded, that the said being Incumbent and any action, to discover in pleading any wrong, as soccepting Incumbent pleaded, that the Gould was of opinion against the Defendant, because he had not in his plea any interest in the Addown is an good pleading in any action, to discover in pleading any wrong, as socce, diffesin, usingation. But at least the Gould not they are agreed, that Imagement should be given against the Dueen Mary, and that the Addown pleaded against the Pueen, but also an estate, so

Mich. 28, & 29. Eliz. In the Common Pleas.

LIX. Kynters Case.

Debe.

Kynter brought bebt upon an Obligation, the condition was, that whereas the Plaintiff had bought of the Defendant a Ship, if then the Defendant half enjoy the faid Ship, with all the furniture belonging to the same without being disturbed for the said Ship or any furniture appertaining to it; that then, so and the Case was, that after the sale of the said Ship a stranger such the Plaintiff for certain monies due for certain Ballass bought by the Defendant for the same Ship and put into the said Ship before the sale of it, and in the said suit the Plaintiff obtained a Judgment and Execution, and thereupon the said Ship was seised, and all the matter was, if Ballass be surniture of a Ship or not; And it was moved by Serieant Gawdy, that it was; for Ballass is as necessary to a Ship as a Sail; but the Court was against him, for sometimes a Ship may sail without Ballass, for it may be laden with such Aperchandizes which are convenient Ballass in themselves, as Coals,

Alheat, &c. Periam at the first doubted of it: and by him, if I be bound upon condition, ut supra, I am bound to deliver the Guns being in it at the time of the sale, but pet he concessed, that the Plaintiss should be barred because he had not specially shewed, that at the time of the sale the Ballast was in the Ship.

Mich. 28, & 29 Eliz. In the Common Pleas.

LX. Pendleton and Gunstons Cafe.

Pendleton informed against Gunston upon the Statute of 13 Eliz. Caps. for that, where the laid Pendleton had before brought a plaint of white against I.s. in the Guid-Hall of Norwich; upon which issued out of the laid Court an Attachment against the said 1.5, by which the Sherisf of Norw being teady by virtue of the laid processed attach the said 1.5, by his goods, there, the now Defendant in disurbance of the said process and the execution of it, bid publish and them to the Sherisf a conveyance, by which be claimed the said goods as conveyed to him by the said 1.8, &c, and averted the fraud, &c and it was moved by Sericant Smag, that the matter of which the Defendant is charged is not within the laid Statute, because the abouting of the said conveyance both not go in delay of the execution; for no Audgment is given but only in delay of process; but the Court was clear of opinion to the conteary, and that by reason of the Scatute and the words of it, icil delay, hinder, or defraud Creditors of their suit and laiwful sations, suces &c sor here is a delay; sor want of serving the said setachment, the Appearance of its to the suit want of serving the said setachment, the Appearance of its to the suit average which institles conceived, that such avoiding of such conveyance, where no suce is depending is within the said Statute, which Anderson doubted. See the pleading of this Case reported in the second Book of Entries, 207, 208. 30 Eliz per quod seda impedita suit; &c. Entries, 207, 208. 30 Eliz per quod fecta impedira fuit; &c.

LXI. Mich. 28, & 29 Eliz. In the Common Pleas.

Fener Berjeant moved this Cafe. In Alien purchafeth Lands in 4 Len.
Fee, The Queen confirms it to the Alien, Office is fruit, if the ton-Alien, Purchaurmation shall bind the Queen, and it feemed to some that it flowed, for. normation shall bind the Queen, and it seemed to some that it shall, for for by the Lord Anderson, when an Alien is enseased by receivery by the Livery the fee-simple, of which he shall be selsed, until Office be found; and a Precipe quot redda syeth against him. And by Fenner an Alien and Denizen Joynt tenants are discised, they both shall soon in Asize, vide is H. 4. 26. and by him; the kings stief being an Anderstrie takes a Dusband, and bath sine; Office is sound, the Dusband shall be Tenant by the Curtely, which see 33 Eig. Travers 36. It was argued the other side; that the estate of the Ahen is so seeds that a constitution cannot enurse upon it; say an Alien cannot take but to the use of the king; and cannot be enceoffed to another use; and if he be, such use is void, so, there is not a sufficient session the Alien to carey anuse. And it hath been adjudged in the Case of one Forces, that where an Alien and the late Forces were Joynt surthalogs, and the Alien view, Forces it bath been adjudged in the Cale of one forces, that where an alten and the laid forces were Joynt outchalops, and the Alien vied, Forces bad not the whole by the Survivors but that upon an Office found, the Queen hould have the movety: See Dier 17 Elia 283.

#### Mich. 28, & 29 Eliz. In the Common Pleas.

LXII. Sir Roger Lewknor and Fords Cafe.

1 Cro. 17. Co.5.Rep. 12.b.

CIt Roger Lewknor feifet of the Mannoz of Wallingford, leafed the fame Six Roger Lewkhor fetted of the manny of Wallingtord, fealed the fame to A. for years, and vied, after which it was Enaced by Parliament, That the faid Danot hould from henceforth be deemed and reputed in the Deirs of the body of the faid Six Roger, begotten upon Elizbis Dife, the faid Dir Roger having three Daughters only, bithout any other tifue: The Daughters married busbands and had illustrating on his entered in the faid Manny to B. C. and D. and afte to one Shelley, B.C. and D. aftigned their interest to one Sponer, one of the Defendants, and Shelly aftigned their interest to one Sponer, one of the Defendants, excepting the Charles and Cinderwood. Chast is committed; one of the Daughters having issue pieth. If him her bushand, the two Ambitishs. ercepting the Mode and Cinderwood. Washer, the two herbirds Daughters having issue dieth, swing ber dusband, the two herbirds disters and their dusbands, the Term being expired. Rought a Whie of Man, leaving out the Pusband of the third differ, who was Tenant by the Curtes, against sheller and Sponer, who tenevan. Shutdowerk decident tak Extention to the Usit: sil. pradicion Rogers coincident of the fine, which shall be intended being general, and by the Declaration is appeareth, that the Daughters have to them by sat of Barliament and especial inheritance as Beirs in westal tail, and that by a special condepance; and therefore the Plaintists ought to have brought a special with according to their Case, as where Cessuy que us, maketh a lease for years by therefore the plaintists ought to have brought a lease for years by therefore the asset of the Messes ought to have a special with of wall, according to their Case, as where Cessuy que us, maketh a lease for years by therefore the asset of the Messes ought to have a special with of wall, according to their Case, as where case the committeeth Wash, now the Fedicest ought to have a special with of wall, according to their Case, as where case the chart of the Messes of the Case, so upon another reason, so in such safe the estate of the Messes for years is created by the satute. Another Exception was taken to the Case, so the Case, so in the Declaration it appeareth, that one of the conjunction tenuerunt, and in the Declaration it appeareth, that one of the Defendants is allignee of three parts of the Lands Demileb, and the o. ther Defendant of the fourth part, and to separatim tenuerunt, but that Exception was also disallowed, because originally it was one and intiect demiled interest and estate, and fo it remaineth as to the Plaintists, ale though it be devised by the Lesee himlelf. Another Exception was taken egought be deviced by the mence minicit. Another Exception was taken to the Clift, because here it appears upon the Plaintist shewing, that His Roger Lewknor had three Daughters, and that they have all taken bushands, and that they have all taken bushands, and that they have is used, that one of the laid Daughters is dead, in my her Hisband, who is not named in the Writ, so, which cause the Clift shall abate: Dec 22 H.6.24.25. But that Exception was also disallowed, for as this Case is, there is not any reason, that the Tenant by the Luctest should sopnin this Lation, so, no judgment shall be given here, that the Plaintists shall recover the place wasted, for the term is expired, as it appeareth by the words of the Writ, Eil. quareavenur, and the Tenant by the curter is in possession, and where Tenant by term is expired, as it appeareth by the words of the Millians tenuerum, and the Tenant by the curtety is in polletion, and where Tenant by the curtetie and the Peir joyn in an Acion of Mad. Tenant to his thall have Locum valueum, and the Deir the damages, which fee at H.2.13. As unto the matter of Law, upon the Treptions of Woods and inderwoods, it was argued by Shutleworth, that the Acion of Mad was not well brought against Ford, &c. for the Asignment made by Shelley to Ford was with an exception of all Moods and Anderwoods, and therefore Shelley remained Tenant, and he ought to answer for the Calood and the Ainderwood in the Acion of Mad, for upon every demile of Lands the Taloods there aroming are as well demiled as the Tand it felf. the Woods there growing are as well demiled as the Land it felf, for to it appeareth by the Whit of Wast in domibus & boscis dimissis ad terminum annorum, &c. which proves, that the Trees are parcel of

the demise, and so may be execepted: See Dyer 28 H 8. 19. by Shelley and Baldwin. A man leaseth a Manoz, except Woods and Underwoods, the Lessec cuts the Trees, an Action of Wast doth not lie against him for the same, for the thing in which the Wast is supposed to be committed was not demised, &c. and therefoze the Lesse that be punished as a Trespasso; and not as farmer: Fenner Serieant contrary, and that the Exception of the Mos and Anderwoos is meerly void; for Shelley who assigns his interest with the said Exception, bath not any such interest in the Woods and Underwoods, so as he can make such erception, for he had but an ordinary interest in them as Farmer, viz. House-boot, bedge-boot, &c. which interest cannot by any means upon an Assymment be referbed to the Asignor, in gross of the estate, no moze than if one bath common appendant to his Land, and he will make a froffment of the Land, referving, or excepting the common. And he who hath the inheritance of the Land, hath an absolute property in the Crees, but the Lessee hath but a qualified interest, and there fore 21 H 6.46. the Lessoy during the term for years may command the Crees to be cut down: and 10 H.7.3. Lessee for years hath not any interest in the Trees, but for the loppings, and for the chadow for his Cattle: And in the Tale cited, where Leffee for life and he in the Reversion make a Leale for life unto a ftranger, and wast is committed, and they Co. 1 Inft. 42.2 bying an Action of Mast, the Tellee for life shall have the place wasted, and he in the Keversion the treble damages, for in him was the true and very property of the Crees, and therefore the treble damages do belong unto him, and not to the Lessee for life, who joyneth with him; and the reason wherefore the Lessee for life or years shall recover treble damages against a stranger who cuts down any Trees growing upon the Land to him demiled, is not in respect of any property that the Lessee hath in the Trees cut down, but because he is chargable over to his Leffor in an Action of Walf, in which he thall render damages in luch proportion. So fee 27 H.6. Waft. 8. A leafe for life is made without impeachment of walf, a stranger of his own wrong cuts bown Trees, against whom the Lessee brings an Action of Trespals; in such Cafe he hall not recover treble damages, not for the Trees, but only for the breaking of the Close, and the loppings, for he is not chargeas the over to his Lessoz for the same, because that his Lease was made without impeachment of Walts and if the Leffee hath such a flender interest in the Trees where his Lease is without impeachment of wast, his interest is less, where it is an ordinary lease without any such priviledne: And the property which the Tesses for years bath in the Trees in such Tase, is so appropriated to the postession, that it cannot be levered from it. Windham and Anderson Juffices were of opinion, that the Exception above is meetly void: for Ford the Affignee of Shelly is now Termer and farmer, who alone can challenge interest in the Trees against all but the Lessoz, and Shelley after his Assignment, is meetly a francer. The interest of the Lesse, and also of his Asignee in the Crees is of necessity, and follows the Farm and the And as the shadow doth the body; And by him, where Lessee so years by reaton of his lease is to have collinately, yet he cannot imploy them but to the venetic and profit of his farm, for if he sell them of them elsewhere he shall be purified. The tent the creeks that the creeks and the collinary is the tent the creeks that the creeks and the collinary is the state of the collinary in the collinary is the collinary in the collinary in the collinary is the collinary in the collinary in the collinary is the collinary in the collinary in the collinary is the collinary in the collinary in the collinary is the collinary in t elsewhere he thall be punished. Rhodes and Periam Juffices, that the exception is good, as the fruits of the Trees, Shovelers, &c. And after-wards the Case was adjudged upon another point in the pleading, so as the matter in Law did not come to Judgment: See Saunders C 41 Eliz. Celhere Leffee both affign, excepting the Timber Trees, it is a void Erception.

#### Pasch. 29 Eliz. In the Kings Bench.

#### LXIII. Gray and Jeffes Cafe.

t Cro. 55. Action of affault and Batterry.

In an action upon the Cale by Gray against Jesse, the Plaintiss verb, that where he had placed his Son and weir apparent with the Defendant, to be his Apprentice, and to learn of him the Art of a Tailog: That the Desendant had so beaten his Son with a Spade, that he thereupon became lame, by reason of which he could not have so much with his Son in marriage of him as otherwise he might have, because the same lameness is a disparagement to his said son: And surther shewed, that he himself might span twenty pounds per annum in Lands. Haukon argued so the Plaintiss. The action Quare slium & haredem cepit & adduxic, is given to the Father in consideration that the marriage of his Son and heir doth appertain to him by the Law, and here by the Battery the Son is become so same, that he is not so commendable to a Harriage as before; and if the Father had soft the whole marriage, then the Father should have had the Action Quare slium & haredem, &c. but here he hath not loss the whole marriage, but the marriage is lessened by it, and therefore he shall have this Action. Tanseld contrary; I contels, that the Father dught to have the marriage of his Son and Deir so long as he is sub potenter paris; but herethe Father bath committed all his interest, power and authority in his Son to the Desendant his Master, with whom he hath bound his Son Appendic so so with his Son of his Harriage wray. The Action Quare slium & haredem, &c. is not given to the Father, because his marriage belongs to him, but because of the Education; and such was the option of Clench Justice, and the marriage doth not belong properly to the Father: For if the Son marriage doth not belong properly to the Father: For if the Son marriage doth not belong properly to the Father: For if the Son marriage doth not belong properly to the Father: For if the Son marriage doth not belong properly to the Father: For if the son marriage doth not belong properly to the

Pasch. 29 Eliz. In the Common Pleas.

#### LXIV. Bullers Cafe.

evin.

2 Len. 196.

2 Len. 216. Post. 327.

£ Co. 77.

Lound Buller brought a Replevin against two, who make Conusans as Baylies to A. so, rent arrear reserved upon a lease so, life, Co which the Plaintist in Bar of the Conusans pleaded, that two strangers had right of Entry in the place where, &c. and that the said two Defendants by their Commandment entred, &c. and tok the Cattle of which the Replevin is wought, damage feasant, absque hoc, that they took them as Baylies to the said A. and upon that Traverse the Defendants wid demur in Law. Shutleworth Berjeant; the Traverse is not good, so, by that means the intent of the party shall be put in issue, which no Jury can try, but only in Case of Recaption. See 7 H.4.101. by Gascoign. If the Bayly upon the distress shews the cause and reason of it, he cannot afterwards vary from it, but the other party may trice him by Traverse; but if he distrain generally without shewing cause, then he is atlarge to shew what cause he will, and the other party shall answer to it. And it was said by the Court, that when a Bayly distress, he ought, if he be required, to shew the cause of his distress, but if he be not required, then he is not tied to do it. Anderson. We were all agreed in the Case betwirt Lowin and Hordin, that the Traverse, as it is here, was well taken. The Number soll of that Tase is M. 28, £29 Eliz. 2494.

Pafcb.

# Pasch. 29 Eliz. In the Kings Bench.

#### LXV. Hudson and Leighs Case.

Hudson recovered against Leigh in an Action of Battery, for which a Capias pro fine issued against Leigh; and allo a Capias ad Satisfaciendum, te turnable the same Cerm at one and the same Seturn: As to the Capias pro Processing to the Capias processing to the Cap Lapis pro in efflied against Legal and also a Capisa of Satisfacionalm, to turnable the same Term at one and the same Acturn as to the Capisa pro from the the Health against adaisfacionalm, non chinventus: And sot this contrartety of the Keturn, the Court was of optimion, that the Oberist should be americe; but it was moded by the Council of the Oberist, that the awarding of the Capisa pro fine wild keturn of the Allie of the Allie of the Allie of the Capis pro fine wild keturn of the Council of the Oberist, that the awarding of the Capis pro fine wild keturn of the Capis pro sine being both, it matters not how of in what manner it be returned, but the Court shall not respect such process and them the Capis pro sine being both, it matters not how of in what manner it be returned, for the Court shall not respect such process on any return of it, and then the Court shall not respect such process as ad Satisficiendum only is returned, and not the Capis pro sine. And not the Capis spro sine, and not the Capis spro sine. And not the Capis spro sine, and here and made all process the parturn which shall st was sand before the Section of the Oberist in Capis spro sine was sent to the sant shall st was sand sproke the sine states the party by a Capis pro sine, now upon this taking he is in Execution for the party, and it was sand she sent so the estage. And in that take the Capis pro sine was sell awarded, and the Capis pro sine was sell awarded, and the Capis spro sine sell awarded, the Capis spro sine sell sell awarded, the Capis spro

# Pafeb, 29 Eliz. In the Common Pleas.

#### LXVI. Potter and Stedals Cale.

Ite of Land leafed parcel thereof to bold at tilll, and being in pulletion of the relidue, ledged a fine of the whole, the Leting entred into the Land which was let at will in point of the whole; in the name of the whole, it was bolden the fame is a good entry to the bable. But fithe Differior leafeth for pears part of the Land. Whereof the differilit was committed and the differile afterwards enterth lats the Anne 16. which continues in the policific afterwards enterth lats the Anne 16. which continues in the policific afterwards enterth lats the Anne of the i land are; whole, the fame Entry fall and external to the Land leafed for here the Lefte is in by title, but in the other safe med, so when sevant top life leafeth it at will, and afterwards ledged a Fine, the land is a determinate legal.

tion of the Will. 16 Eliz. Dyer 377. 1. In the same plea it was holden, that if there be leffee for life, the remainder for life, the remainder in fee, Leffee for life in pollettion ledgeth a fine Sur Conusans de droit, &c. to his own use, upon that fine a fee-timple accrues,

Pafch. 20 Eliz, In the Common Pleas. 317300333

# LXVII. Leigh and Hanmers Cale. words and a this continuity of the Action, the

Debt upon & Recognizance :

Owen 25.

Thomas Leigh Esquire brought an Action of Debt upon a Recognisher the Hance in the nature of a Statute Stapking and some a Chief barres of Andrews of Andrews of Lond in Camera Guild hall Civitatis pression and demanded a 500 pounds, upon such Aecognizance acknowledges the Charles are Elizand upon desapts of the said Hanner, according to the custom of London used in course of Attachment, attached fix himbored pounds in the hands of one W. Holton of Grays law in part of saring faction of the said debt of one thousand sive hundred pounds; and now within the year same the said Hanner, or ad dispersadum debitum prediction a precept of Scire, is a against the said Thomas Leigh, and after but his the pear came the latter rainer, & an interestional section prediction a piecept of Scire facias against the latter Thomas Leigh, and after pleaded, and demanded Open of the late Accounts and had if, and upon the late 600 pounds, in manibustics we be in the chirch above chirch above and upon the whole Record the Case was thus the land Leigh Esquire, being selled of certain spanous and other Lands in the County of Glocest had issue this Daughter and best inderstable. the County of Glocelt had illus sin his Danghter and beit inheritable to the faid Lands, and by Indent. dated no mais 29 Eld. granted Cliffoli-amegulam gubernationems document, maritagina did. Elizabeth faid Thomas Leigh by Indentures an Marin 20 Eld. Lugh, after which the faid Thomas Leigh by Indentures an Marin 20 Eld. Thomas Leigh by Indentures and Marin 20 Eld. Thomas Leigh by Indentures and Indenture to Silving Theory, after which the faid Sir John Spencer and Thomas Leigh in their Indenturable 20 of Angul 20 Eld granted and alleghed to the faid John Harmen the faid tuladly this, government, countified and marking a trage of the faid frie and all their companies by which had recited Indenture and Angul, the faid John Harmer Coursement of the faid County of the White Indenture and Angul, the faid from Eld of the Indenture and Angul, the faid from Eld of the Floridad Linner Course and well amendment of the faid County of Floridad Linner Course and well amendment of Eld Eld County for Floridad Linner perimple the faid of the Floridad County of Floridad Linner to the faid county of the Angular County of the age of the Lander took to wife the faid Eld. the faid Tho Flanmer took to wife the faid Eld. the faid Tho Flanmer took to wife the faid Eld. the faid Tho Flanmer took to wife the faid Eld. the faid Tho Flanmer took to wife the faid Eld. the faid Tho Flanmer took to wife the faid Eld. the faid Tho Flanmer took to wife the faid Eld. the faid Tho Flanmer took to wife the faid Eld. the faid Eld. then being of the age of nine

13 annorum and no moze, and the faid Eliz. then being of the age of nine pears and no moze, and Thur Hadmer aforefait over theo, sc. And pleaded further, that the faid Tho. Hanner after he attained his full age of fourteen years, and before my agreement of affect by the faid Tho. Hanner to the marriage aforefaid betwirt the faid Tho. Hanner and the

Hanner to the marriage aforelate between the late. The Hanner and the late line had alterated ident. The despitationer came to desagre of four test leaders, fail, to die seperationer. Elizard license marriagemediageravit, amorganistische specialistische state in des plentum in Bang lass postantinger al. the Covenant containers in the Antonia is monthlice specialistische state in des productioners in the Antonia is monthlice state in the specialistische state in the specialistische state in the specialistische state in the specialistische specialistisch

Andit was arrived before the spayer Recorder, and Alberriendo

Fondon, in their Guild-Hall by Angier of Grays-Inn, ou the part of Leigh the Phintiff; and he in his Argument no much rely upon the definition of marriage, by Jukinian in his Antitutions. Nupite maris & femine conjunctio individuo continent via focicarens and the marriage fixed in question is not all coloring to the fair difficultion, for the marriage fixed in question is not affective and the plant of make fuch contract, age not performs able by Law to make fuch contract, age not performs able by Law to make fuch contract char can as ignore and make in the contract char can as ignore and individual properties of the case of the properties of the contract of the contract of marriage. And there is afto rempte one reason of the law of contract of the marriage now in question might be disorted by the contract of the co individua continens vix societatems and the marriage here in question is not according to the laid difinition, for the persons, parties to this contract, are not persons able by Law to make such contract, because that non ac-

thall have Dower, which see also 35 H. 6. and pet Dower shall never accrue but in case of marriage in right, so there, never coupled in marriage, sagood Plea, bee 12 R.1. Dower 54. In Dower the Tenant pleaned, that the Pushandant the time of his death was but at the age of 10 pears, and the Demandant now but 11 years, and pet Judgment was given for the Demandant, for hy Charleton the same was a marriage in right until disagreement, bee 21 Eliz. Dyer 369. A woman at full age marrieth a bushand of 12 pears, who dieth betwee the age of content, the same is a good marriage, and so ought to be certified by the Bishop; and 7 H. 6. 12. by Newton, a woman married within age of content may bring an Action as a feme sole, and the Cart to did abate. Stamford Prerogat. 27. 19 E. 3. Judgment 123. In a call to state, the Jury sound, that the Insant was of the age of 10 pears, and no more, but they did not know whether she was married of not, but de bene esse, if she be married, assess damages one hundred pounds, and if not, sive pounds, upon which the Lord hall recover damages; bee 13 H. 3. gard. 148. Such marwhich the Lord hall recover damages; bee 13 H. 3. gard. 148. Such marthall have Dower, which fee also 35 H. 6. and pet Dower thall never acit appeareth that marriage at luch an age is luch a marriage upon which the Loydhall recover damages; See 13 H. 3. gard. 148. Much marriage in the life of the Ancestoz, infra annos nubiles, if there de no dilagreement shall bind the king: And after the death of the Ancestoz, the heir shall remain in custodia Domini Regis, usquad exatem ut consentiat, vel dissentiat, 45 E. 3. 16. Ana Mich of Mard, the Ansant was found of the age of 12 years, and the Aurors gave damages 300 marks, if he were married, and 27 H. 6. gard. 118. & 47 E. 3. Br. Trespass 420. and Fire. Action upon the Statute 37. Actended de muliere abducts cum bonis viri, where the wife is within the age of consent: and if I be bounden unto another in an Obligation, upon condition to pay a sum of many upon the marriage day of 18 now, if 18, be married within the age of consent, A aim bound to pay themony the same day, although afterwards the parties do distent, and the Wiste after such marriage shall be received in a Plea real upon the Default of her Husband; and the words, si dicta Elizad id condescendere & agreer veller, are to be understood of an agreement at the time of the marriage, soil, at 02 befoze they shall have accomplished their shapes of 21 years, makes the matriage, soil, that his Son shall take to Wife the laid Elizabeth, at which of the two times he last take to Wife the laid Elizabeth, at which of the two times he would, soil at 04 befoze, &c. to the marriage befoze &c. is as effectual in respect of the performance of this condition, as if the marriage had the case had after and the compution could not be heter will, sell at of before, &c. to the marriage before &c. is as effectual in respect of the performance of this condition, as if the marriage had been had after; and as the case is, the condition could not be better performed, for if the marriage had been stayed till after 14 years, &c. although the marriage both not ensue, yet the Obligation had been so, setted, and that the marriage be solumnized sust at the age of both of 14 years, was impossible, for I homas Hanner was the elder by 2 years than the said Blizabeth, and therfore they ought to be married at such time which might stand with the condition, and the same is bone accordingly: And as to that which bath been objected. Chat now by disagreement the marriage is betermined, we ought to observe that Hanner was bounded so the performance of the Covenant, and that his son and heir apparent maritaret, & in uxorem duceret dictam Eliz. ad vel ante, &c. which is executed accordingly, and he is not bounded so the continuance of the said marriage, but the continuance of the same ought to be lest to the law, which giveth to the parties liberty to continue the marriage by agreement, or to dissible it by disagreement: And therefore if I am bounded to you, that I s. (who in truth is an Insant) shall levy a Pine before such a day, which is done accordingly, and afterwards the same is reversed by Eccol, pet notwithstanding the condition is performed, &c. and afterwards Judgment was given against the Plaintist.

#### Pasch. 29 Eliz. In the Common Pleas.

LXVIII The Earl of Warwick and the Lord Barkleys Cafe.

A Mbrose Earl of Warwick and Robert Earl of Leicester brought a Parties in Idea of Partition against the Lord Barkley, in which the parties Challed Pieaved to issue. And nowat the day of the Enquest the Defendant aid challenge, that in the impole Pannel there were but two pundreders, and at the first it was doubted by the Court, if upon the Statute of 27 Eliz. cap. 6. by impich it is Enaced; That no surther challenge for the Hundred shall be admitted if two suscient bundreders no appear, the Enquest shall be taken; But at length the impole Court was clear of opinion, that the laid Statute and extend but to personal Actions; but this Action of Partition is a real action; and Summons, and februard lieth in it, but not process of outlawry, and therefore here four hundreders ought to be returneds so in an Islan of Class, although it be in the personalty; and therefore the Council of the Plain, tiss prayed a Tales.

### Pasch. 29 Eliz. In the Common Pleas.

LXIX. The Archbishop of York and Mortons Cafe.

The Archishop of York teeobeted in an Asize of Noveldission against 1 Lea. 159.

One Morton before the Justices of Asize; upon which Judgment Error opon removed hought a Cliff of Error before the Justices of the Common covery in Pleas, and after many motions at the bar, it was adjudged that a Asize.

Cliff of Error upon the laid Judgment did not lie in the laid Court, 18 Eliz. Dyer 250. F.B. 22. That upon Erronious Judgment given in the kings Bench in Ireland, Error thall be brought in the kings Bench in England, 15 E. 3. Error 72. Feaner who was of Council with the Archishop demanded of the Court bow, and in what manner the Ascord shall be remanded to the Justices of Asize, so as the Archishop might have execution; To which the Sourt said, that the sures was is to have a Certificate out of the Chancery into the Common Pleas directed to the Judges there; and then out of the Chancery by Miximus to the Judices of Asize. But Fenner made a difficulty of it to take such course for the remanding of it, so doubt they would not allow it to be a Second where it is not a Second, so upon the matter the Record is not removed, but remains with the Judices of Asize. Then Anderson said, Sue Ercution out of the said Record; but because the Second came before us by Cliff of Error, it shall be also removed and remanded by Wilt: and so it was.

#### Pasch. 29 Eliz. In the Common Pleas.

# LXX. Kempe and Carters Cafe.

Thomas Kempe brought Crespals, for breaking of his Close against Copybold. Carter and upon pleading they were at issue, if the Lord of the Dan-Orasocialist granted the said and spercopiam rotulorum curie maneri predictificand moderated the said and it was given in Eddence, that within the said was anot were divers customary Lands, and the Land, see, per common of late at his Court of the said against granted the Land, see, per common of late at his Court of the said against granted the Land, see, per company

Evidence of

piam rotulorum curia, where it was never granted by copy before: It was now holden by the whole Court, that the Jury are bound to find, Dominus non concessit, so notwithstanding that de sacrodominus concessit per copiam rotulorum curia, pet, non concessit secundum consucudimem manerii pracisel. so the said Land was not customary, nor was it demisable, so the custom had not taken hold of it. In the same Case it was also shewed, that within the said Manor some customary Lands are demissable for siste only, and some in fee; and it was said by the Lord Anderson, that he who will give in Evidence these several customs, ought to shew the several limits in which the several customs are bearally eliming, as that the Danor extends into two Couns, and that the Lands in the other in see, and he ought not to shew the several customs promised valere through the whole spanor of Waddurftin the South of Sussex consisted of two lorgs of Copy hold, soil. Sook land and Bond land, and he several customs disseverable in several manners: As if a man he first admitted to Sook land, and afterwards to Bond land, and dieth selfed of both, his beir shall inherit both; but if he be first admitted to Bond land, and afterwards to Bond land, and dieth selfed of both, his beir shall inherit hoth; but if he be first admitted to Bond land, and afterwards to Bond land only, it shall descend to the pounges of: and if customary Land bath been of ancient time grantable in fee, and now of late time sor the space of sorty years hath granted the same sort is he lord, and he grant the same also mobed in this case, If customary Land within a Panor hath been grantable in fee, if now the same Essent to the Lord, and he grant the same again in fee, if now the same Essent to the Lord, and he grant the same again in fee, for the grant so life the same has bolden a good grant and warrantable by the custom, and should bind the Lord, so the custom which enables him to grant for life; the same not any intercuption of the custom, acc. which was granted by the who

Pasch. 29. Eliz. In the Common Pleas.

Talker and his Wife brought a Witt of Dower against Jervice Nevil,

LXXI. Walker and Nevils Cafe.

Dower

V and judgment was given upon Nihil dicit, and because the first busband of the Wife dieseled, a callett of Enquiry of Damages was awarded, by which it was found, that the Land which she ought to have in Dower, the third part was of the value of eight pound per annum, and that eight years elapserum a die mortis viri sui proxime ante inquistionem & assidant dama to eight pounds; and it appeared upon the Record, that aster Judgment in the Writ of Dower asoceased the Demandants had execution upon habere sacias seisnam, so as it appeareth upon the whole Record put together, that damages are assessed to eight years, where the Demandants have been seised so part of the said eight years, upon which the Tenant drought a callett of Erroz, and assigned so Erroz, because damages are assessed untill the time of the Inquisition, where they ought to be, but to to the time of the Industrian, where they ought to be, but to to the time of the Industrian, where they dought to be, but to to the time of the Industrian, but the Erception was not allowed; Another Erroz was assigned, because that where it is sound, that the Land was of the value of eight pounds per annum, they have assessed damages so eight years, to eighty pounds, beyond the Revenue for according to the rate, and value sound by verdict it did amount but to sirty sour pounds: but that Erroz was not also allowed; for it may be, that by the long betaining of the Dower, the Demandants have sustained more damages than the

bare

Damages.

bare Revenue, &c. Another Erroz was affigned, because Damages are affested for the whole eight years after the death of the bushand, where it appeareth, that for part of the said years the Demandants were seised of the Lands by force of the Ludyment and execution in the Whit of Dower; and upon that matter the writ of Error was allowed.

Pasch. 29 Eliz. In the Common Pleas.

LXXII. Archpool against the Inhabitants of Everingham.

A an Agion upon the Statute of Winchefter of buy and Cry fir Archoopl against the Inhabitants of the Dundled of Everingham, the nury found, that the Plaintist was robbed 2 Januarii post occasium solis, sed per lucem diurnam, and that after the Aobberd committed, the Plaintiff went to the Cown of Andover, and addertised the Baylies of the said Cown of the said Kobberd; and further sound, that the said Cown of Andover is not within the said Hundred of Everingham, and that there is another Cown nearest to the place where, &c. the Robberd was done, than the said Town of Andover within the said Dundred, but the said Town of Andover within the said Dundred, but the said Town of Andover was the nearest place where, &c. by the kings high way: It was moved that upon this matter, the Plaintiss high way: It was moved that upon this matter, the Plaintiss high way: It was moved that upon this matter, the Plaintiss high way: It was moved that upon this matter, the Plaintist should not have jungment, for that he hath not made his Fresh sute according to the Law, so, he ought to have begun his Fresh sute within the Pundred where the Kobbery was done; and it was also objected, that the Kobbery was done post occasion solis, in which Case the Hundred ers are not to pursue the Walesarogs. And Walmsley Serjeant cited a Tale out of Brackon: Si appellatus se desenderit contra appellanter rotal seusque ad horam in qua Stellæ incipiunt apparere, recedat quietus de appello, and it is not reason to dissethe Hundreders to Follow selons at such a time, when so want of light they cannot see them. And all the Justices were clear for want of light they cannot see them. And all the Justices were clear per lucem diurnam, and that after the Robbery committed, the Plaintiff for want of light they cannot fee them. And all the Justices were clear of opinion, that if the Robbery was done in the night time, the In-habitants are not bound to make the purfute: And by Rhodes, if in a Præcipe quod reddat of Lands, the Sheriss fummons the Demandant upon the Land in the time of night, such a summons is meerly boin.

Pasch. 29 Eliz. In the Common Pleas. Intrat. Trin 28. Rot. 1458-

#### LXXIII. Wiseman and Wisemas Case.

Is an Action of Debt by Wiseman against Wiseman, the Case was, that Debt.
In one Wiseman was sessed of the Lands, and by his Casil devised, 1. 1 And 160.
I will and bequeath unto my vise B. acre for the Term of her life, the Owen 140.
I will and bequeath unto my vise B. acre for the Term of her life, the Owen 140.
I will an one of the Bon Thomas in tail: Item I will and bequeath unto my Son Thomas, all my Lands in D. and also my Lands in S. and also my Devise.
Lands in V. Also I give and bequeath unto the said Thomas my Son all that my Island or Land enclosed with water which I purchased of the Carl of Esex: Co have and to hold all the said last before devised premisses unto the said Thomas my Son, and the here's of his Body: The only matter was, If the Habendum shall extend to the Island only, in which Case Thomas shall have but sor life in the Lands in D. S. and V. or unto the Island, and also to the Lands in D. S. and V; in which Case he shall have Fee-tail 2 Roll. 60.
In the whole. And it was argued by Fenner, that the Habendum Roph 126.
In the whole. And it was argued by Fenner, that the Habendum Roph 126.
In the whole. The Island only; as he said, the opinion of the Sulfices of this Court was in 4 Eliz. in another sale. I devise my Pano to D. my eldes Son, and also my Land in S. in tail, in that Case the entail limited son the Landin S. shall not extend to the 1.Roll. 844.

2 Bulft. 180. 181.

Extent of an Habendum

fait Manoz, and of fuch opinion was Welton, Welth, and Dyer; Brown contra, that the Son hath taff in both. But if the words of the Devile contra, that the Son hath tan in both. But if the words of the bebile had been, I bebile my Panog of D and mp Lands in 8. to my Son in tail, here the Son had an efface tail in both. So it hath been adjudged, that if I bevile Lands to A. B. and C. luccellibely as they be named, the same is good by way of Aemainder. Walmesley contrary, and he relied much upon this, that the words of the Habendum are in the plural number, All the last before bevised premises, whereas the thing lately devised by the Will was an Island in the singular number, which cannot satisfie the Habendum, which is in the plural number, and therefore to bettire the plural number in the Habendum, the Habendum by sit construction shall extend to all the Lands in D. S. and V. and so upon construction thall extend to all the Lands in D. S. and V. and so upon the motion made at another day, it was resolved by all the Julices, that the Habendum should extend to all the said Lands, and the Habendum should not streighten the Devise to the Juand and.

Pasch. 29 Eliz. In the Common Pleas.

LXXIV. Fullwood and Fullwoods Cafe.

Bail renders himself in Court.

311

3/16/0.

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of the

In an Action upon the Cale, the Defendant put in bail to the Court to answer to the Action; and now Audgment being given against bun, became into Court and rendred himself, and prayed, that in disparge of his Aireties, that the Court would record the rendring of party in his faceties, test the source would be tenoring of pinnels, which was granted: And the Court demanded of the Plaintiss, if he would peap execution so the body against the Desembant, who said, he would not, whereupon the Court awarded, that the sureties should be discharged; and the Rule was entred, that the Desembant offered himself in discharge of his sureties, and Accordance Querentis allowed catus per curiam, &c. dixit fe nolle, &cc. Ideo confideratum fuit per curiam, quod tam prædict, defend quam prædict. Manucaptores de recognitione prædict. & denariis in eadem contentis exonerentur.

LXXV. Pasch. 29 Eliz. In the Common Pleas.

Feoffments.

be Cale was, be in the Reversion upon a Lease for years, makes a Thatter of feofiment to divers persons to the use of himself for lite, and after to the use of his eldest Son in tail; and the words of the Charter were, Dedi, Concess, Barganizavi, & Feofiavi, and he leased and belivered the deed, but no livery of feisin was made; and afterwards he came to his Lesse for years, and said to him, that he had made a feoficial, and meint was exade, to whom the Lesse said, you have bone were mest, from grad of it: And if that were a good Attornment was the Anestign: It was said that that was the Cale of one Arden And Gem, and Manwood were of opinion, that the same was no Attornment, because it was not made to the Feofice, sail, to the Cranter of the Reversion; and said thouse it was not strong to be to the Grantes himself, and not to Cesay que use. Charter of Feofiment to divers persons to the useof himself for minitelf, and not to Ceftuy que ale. nebiled beemiles iener 991

Attornment.

Peleb. of Eliz. In the Common Pleas.

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ROHEL SOI

JAXXVI. The Parfon of Facknams Cafe.

r Cro. 257 Tythes, and where the fine S ritual court Thall have jurifdiction of

The Parland great facksom brought an Action of Crespals against the Parlan of Hamington and the Calc was Af the Parlan at one Parish claim by prescription a portion of Crespes out of the Parish of

another, if the Spiritual Court thall have the Juridoicion, for the try-al of it: And the opinion of the whole Court was clear, that it though, because that the matter is betwirt two opicitual persons, and is needing the right of Cithes. As 3,5 H. 6.39. I. Clicar of B. brought Crespass for taking away of forty loads of Beans, &c. Che Defendant pleaded, to taking away of forty loads of Beans, &c. The Defendant pleabed, that he is Parlon of the fair Church of B. and the Plaintiff is Alicat, &c. and before the Crelpals, &c. the Beans were growing in the fame Cown, and levered from the nine parts. and he took them as belonging to his laid Church, and demanded Judgment of the Court, &c. The Plaintiff laid, that he and all his Predecestors Aircars, &c. time out of mind, &c. have used to have the Cithes of such a Close, &c belonging to his Aircaridge, and within the faid Close the Beans were growing and were partel of his endowment; and that at the time of the taking they were severed from the nine parts, whereupon he took them. And it was holden by Ashton and Danby, because it is contessed on both sides that the Beans whereof, &c. were Cithes, the Right of which fides that the Beans whereof, &c. were Cithes, the Right of which would come in debate betwirt the Parson and the Clicar, and both are spiritual persons, that the tryal thereof both belong to the Spiritual Court. See 6 E. 4. 3.22 E.4.23.24 in such a matter vetwirt the Parson and Clicar there the Temporal Court was oussed of the Jurisdiction oh. See also 31 H.6.11, betwire the Parson and the Servant of appther Parson. 7 H.4.102. In Crespass by a Parson against a Lap-nate, who said, that one A is Parson of a Church in a Cown adjoining to a Cown where the Plaintist is Parson, and that A let to him the Ache, and demanded Judgment, &c. and pleaded to the Jurisdiction, and by Gascoigne, the Plaintist may recover his Cithes in the Spiritual Court.

Pasch. 29 Eliz. In the Kings Bench.

LXXVII. Bunny against Wright and Stafford.

In Trespals the Case was this: Grindal Bishop of Lond leased parcel Lases within atterwards outset the Lesses and leased unto another for thise lives, and lesses and externation outset the Lesses and leased unto another for thise lives, 32.7, 8 main rending the antient and accustomed Rent, which was consumed by by Bishops. the Dean and Chapter. And afterwards Grindal is translated: Cook argued, Chat the Lease is warranted by the Deatute of 1 Edg. At the Common Law a Bishop might make an Alenation in fee-simple being consisted by the Dean and Chapter, of their consumation may make a Lease for one and twenty years, but with the consumation may make a Lease for one and twenty years, but with the consumation of the Dean and Chapter, of their consumation of the Dean and Chapter may make a Lease for one thousand years. One by the Co.1.Inst. 45.2. Statute of 1 Elia, the power of Bishops in that right is much shifted one to fire the Co.1.Inst. 45.2. More of their possessions but so, one and twenty years of these lives; and this Lease is in all points actoroung to the Statute of 1 Elia for are is begins presently upon the missing of the Statute of 1 Elia for are is begins presently upon the missing of the Statute of 1 Elia for are is begins presently upon the missing of the Statute of 1 Elia for are is begins presently upon the missing of the Statute of 1 Elia for are in all lease i 19 Trefpals the Cale was this: Grindal Billop of Lond leafed parcel Leafes within

Affile during the continuance of the first term. And he cited a Cale lately adjudged in the Exchequer. A Lesso entred upon Lesses pears, and made a Feofiment rending Kent with clause of Re-entry, the Lesse re-entred, claiming his Term, and afterwards during the law Term so years, the Kent reserved upon the Feofiment upon demand of it is behind: Mow hath the Lesso regained the Keversion: And so a Kent map be demanded although not discrinable. And all that was assirmed by Egerton Solicitor General: And see the words of the Statute of 32 H. 8.cap. 28. Rent reserved yearly during the said Lease due and payable to the Lesso, &c. such Rent, &c. and yet by the said Statute, such Leases may be good, although there be a former interest so; pears in being, if the same shall be expired, surrendred, or ended within one year after the making such new lease, and so not expressly payable in rei veritare, annually during the Term.

Pasch. 29 Eliz. In the Kings Bench.

LXXVIII. Bonefant and Sir Rich. Greenfields Cafe.

Sale of Lands by the Executors of the Devisor.

Poft. 260.

Done fant brought Crespals against Sir Rich. Greenfield, and upon the general issue, this special matter was sound: Tremagrie was setsue of a apanot, whereof the place where, &c. was parcel, in his Demesse as offee, and by his callil versied the same to his sour Executors, and further willed, that his said Executors should sell the same to Fir John Samioger so the payment of his bedts, if the said Fishen would pay for it one thouland one hundred pounds at such a day, and bled, Sir John bid not pay the mony at the day; One of the Executors resuled Administration of the Will, the other three entred into the Land and sold it to the Desendant sol to much as it could be sold, and in convenient time. It was moved, that the sale was not good, for they have not their authoutly as Executors, but as Devisers, and then when one resuleth, the other cannot sell by 21 H 3. Cestur que use calliss, that is Executors shall alien his Land, and dieth, although the Executors resule the Administration, yet they may alien the Land. 19 H. 8.11. 15 H. 7.12 Egenton Solicitor argued, that the sale is good by the Common Law, and also by the Statute 49 E. 3.16, 17. Devise, that his Executors shall sell his Land, and dieth, and one of the Executors beeth, another resuleth, the third may sell well enough, and the sale is good. See Br. Devise 31. 30 H. 8.39 E. 3. B. Assis 356. And he put a difference where an Authority is given to many by one beed, there all ought to joyn; contrary, where the submitted shall stand, and take effect: And state the services scale for the Cestator shall stand, and take effect: And here it is found by berdist, that one of the Executors, reculavious Testament, Ergo, he resuled to take by the Devise, so the was devised unto him to the intent to sell, therefore if he resuleth to sell, he botherefule to take and soft to soo resulted to the Executors for the Cestator shall shand, and afterwards it was advisored, that the Condition, so the mannet of it, was good.

1 And. 145.

Pajch. 29 Eliz. In the Common Pleas.

LXXIX. Gamock and Cliffs Cafe.

16.91

Ejections firms. Centauch min

Electione firms was brought by Gamock against Cliff of the agance of Goodly, in the County of Bliex, and upon the evidence the case was:

That the King and Queen, Philip and Mary, leffed of the late Manoz of Hockley, leafed the same to Edmund Terrel for years, exceptis & Refervat. groffis arboribus super præmissis crescentibus & existentibus; Proviso, that if the Conditions taid Lesses his Executors, or Assigns shall do any voluntary Wast in any of the Premisses before demised, that then the said demise thall be boid and accounted none in Law, the said king and Ousen after that lease grant the Reversion to the Lord Rich and his Deirs, the Lesses cuts bown certain great Crees, which at the time of the bemile were not great, but little Crees, but after, tractu temporis became great, and at the time of the cutting down were great, upon whom the Lady Rich, Wife and Midow of the laid Loyd Rich, being Cenant in Dower, the laid Mano; (interalia) being affigned to her in Dower, didenter, for the condition by oken: It was moved; If the exception bid extend to the trees which at the time of the benile were but little trees, but afternooned at the time of their cutting for the commence were the second of t wards at the time of their cutting down were become great; for if the erception do extend to fuch Crees, then upon the matter they were not demiled, and if lo, then wast cannot be assigned in the cutting down of them, and then by the cutting of them, the condition is not broken; But if the exception shall be construed to extend to such Trees paid which were great Tempore dimissionis, then those Trees in which, & at demission, and by the cutting down of them, the condition is broken and the Lojd Anderson was of opinion, that the exception did extend to Crees, which at any time dimissions predict, became great, although at where the time of the demise they were but little, so as upon the matter, such Tenant in Crees were never demised, and so the condition both not extend to down shall them; otherwise it should be if the words had been mode extensible demake advanceistantibus. Another matter was moved, because if the Lady Rich, he was of a conting Cenant in Dower, and so in by the Law, not by the party, and so divide not prive, not as Alignee, could enter so, the condition biotion! And the not prive, not as unignee, could enter to the condition broken! And the Court was clear of opinion, that because, that the words of the condition are, Quando diminio predicterit vacua, &candono-clause of the entery is referved, so that privity is not requisite, the Lady Rich shall take advantage of the condition, is H. 17. Where the words of a Lease are, that upon the not going to Rome, that the Lease shall cease is was holder that the Grantee of the Aeversion by the common Law should take advantage of such a condition; contrary where the circular states advantage of fitch a condition; contrary where the condition is considered in words of resentry, 21 H. 7.12. It was showed hirther, that here is not any voluntary was in the Lesee as to the condition, because bone Dyer 281, by a stranger, and not by the Lesee himself, and for that the condition oven 91. is not broken, and the Lesee is subject unto an action of Class; other wife, if the Leffee had express commanded the Clendee to cut them 

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ind by the LXXX Gill and Harewoods Cafe. to namolis a good

That where the Defendant was enverted to the Plaint of the Unit of the Personal of the Indiana of the India er etthee according to

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cower is demanded, are of

## LXXXI. Pasch. 29 Eliz. In the Common Pleas.

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2 Co. 74. 5 Co. 38. 8 Co. 155. all this

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Potentarm, and the Kine was to two, and their heirs, but the Court would not receive such Fine for the incertainty of the Inheritance, which always in case of Fine ought to be repoted in a person certain, and not left to uncertainty of the Survivor, and the said Serjeant prayed presently, that the said Fine be received at the peril of the Conusers, but the same was denied him by the whole Court.

Mich. 29, & 30 Eliz. In Communi Banco.

### LXXXII. Mascals Case.

Covenant. 2 Cro. 644. Mascal leased a House to A. so years by Indenture, by which A. covenanted with Mascal to repair the House Leased, and that it upons be lawful for Mascal his heirs and assigns to enter into the House to see in what plight for matter of Reparation the said house stood, and if upon any such view, any default should, be found in the not revairing of it, and thereof warning be given to A. his Executors, &c. Then within some months after such warning, such default should be amended: the House in the default of the Lesse became ruinous: Mascal granted the Seversion over in Fee to one Carre, who upon view of the House gave warning to A. of the default, &c. which is not repayed, upon which Carre, as assignee of Mascal, hought an Action of Cobenant against A. It was moved by Feorer Hersant, that the action who not lye, default the Poule became ruinous before his interest in the Repetion; But the opinion of the whole Court was against him, so that the action is not concessed upon the ruinous estate of the Poule, of so the committing of Chase, but for the not repaying of it within the time appointed by the Covenant, after the warning, so as it is not material within what time the Doule became ruinous, but within what time the warning mas given, and the besault of the Separation was bappen. ous pappen.

## LXXXIII. Mich. 29, & 30 Eliz. In Communi Banco.

This Chair of Dower, brought by a Woman of the third part of certain Lands, &c. The Cenant pleaded: Chat the Lands of which wower is demanded, are of the nature of Savel-kind, and that the custom of such Land is, that Dower ought to be demanded of the motty of it, and not of the third part, upon which the Demandant did demur: And the opinion of Windham and Anderson Justices was; Chat such a Moman of such Land might at her pleasure bemand her Dower either according to the Custom, or according to the command and fuch a Moman of fuch Land might at her pleasure demand her Dower either according to the Custom, or according to the common Law; for his Anderson, the common Law was before the Custom, and overeantly with the Minimus law, pet if the taketh another Pushand, the Unit late her Damer as it she had been endowed according to the Eustom. Color, an Apprentice the of Inner Cemple being at the Home when the Case had been adjudged against the Demandant, and Southern the Case had been adjudged against the Demandant, and Southern the Colomic and the

I Cro. 825. Poph. 133.

13/26

thief Prothonatary faid, that it was adjudged accordingly, 16. Eliz, and that the Cale was betwirt Gelbrand Demandant, and flyor Cenant.

Mich. 29 Eliz. In the Common Pleas.

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LXXXIV. Beverlie and Cornwals Gafe.

Exercise brought a Quare Impedic against Cornwal, and has Museum Coure Impedic to recover upon a Demurrer in Adw: achieft her Mich. 18, 8, 39 a Roll 805. In a consert upon a Demurrer in Adw: achieft her Mich. 18, 8, 39 a Roll 805. In a months chusen abought a Scire lains upon the marter. And operating the factor of 1.8, and upon that a Scire lains is an Achieft of Pleaded. Cressals at the first of 1.8, and upon that a Scire lains is an Achieft of Pleaded. Cressals at the first of 1.8, and upon that a Scire lains is an Achieft of Pleaded. The first active of the Adminity of the Course of the Adminity of the Course of the Education of the Linds with a first and forest of the Adminity of the Course of the Course of the first of the Administration of the Course of the Course of the first of the Administration of the Course of the Course of the first of the Administration although Beverlie hath recovered in a Quare Impedic against the Prelentee of the Queen; pet because he is not permoved by a chief to the Bishop, the Queen continues I datron, and nothing remains in Beverlie that may be forfetten. But Rhodes into Peram contenty, for dy Periam if after such Aecovery the Incumbent vieth, the Patron thall prelent, for by the funging in the Quare Impedictor Beverlie, the Patron thall prelent, for by the funging in the content of the exercise And to Miscola, it after fact line in him without any other executions was in the patron vieth, his discussion was in the accordance to the private of the Recording the accordance to bother secondary of the Recording in the lands of the execution of the Recording in the lands of the execution of the according to a frames, to bother secondary of the According to the execution of the Recording the secondary is and by this lands of an According to the nature of a Concern had been any expectated the School and College to grain more particle the Nishap for the Greens whereas I the College to the Tungen shall respect the cities of the College that it can be a fine of the College that it can be colleged to the College that the shall be shall be decided to the College shall respect to the College that the college the college college. It had be decided to the College shall respect to the College shall be shall

3 Cro. 427.

upon the pleading of otherwise within the Aecoto, 11 H.4.224 by Hankford. It a clear title for the King be confessed by the parties upon pleading, accirit to the Bishop shall slike for the King; so if such matter appear in Evidence, & the Land in question is seisable into the Kings hands. Dee 9 H.7.9.16 H.7.12.so 21 E.43. by Choke and F.N.B. 38.e. In a Quarelmpedic betwirt two strangers if title both appear to the Court for the
king, a curit to the Bishop shall ssue for the cueen, but in our
Cale nothing is within the Aecord to intitle the Queen, but all the
inatter upon which a curit to the Bishop is prayed for the Queenis
out of the Aecord, and a foreign thing. And as to the Dut-lawry, he
conceived it is not sussiciently allenged; for he ought to have made mention of the Erigent and of all the proceeding upon it, and the Audgment of the Coroners, and for defect of that no title is given to the Queen; and of that opinion was the Lord Anderson, and that it ought to be set forth in the Writin what Cerm the said Beverly was out-lawed, and the Number fioli also, so that if Beverly had bemanded Oper of the Record, the Court might know it: And by Nelson chief Prothonotary, the Term in which the Dut-lawry was, ought to be comprised in the Scire facias. Vide Book of Entries 485, where in a Quare Impedie for the king upon fuch a title, the King thewed in his Count, that A. was feiled of fuch an Advowlon, and granted the next Avoidance to B. and that afterwards one C. impleaded the faid B. in a curit of Account in fluch a Court, where Nihil was returned upon the fummons, upon which issued forth a Capias, upon which is returned, Non est inventus, &c. upon which an Exigent, upon which the Sherist old return, good ad com. tent. &c. & ad v. comitat. tunc prox. præcedent. the fait B. exactus fuit, & non comparuit, & quia ad nullum coundem comitat apparuit, utlagatus suit, and after the the Church vosved. and that by reason thereof it did belong to the Unity to present: vide ibid. 196. accordingly. And as to the Scire sacias all the Judges agreed, that upon the matter the Unit say well enough:

And it is good discretion in the Court to grant such a Calift: And by Rhodes, If two Coparceners of an Advowson make composition to present by turns, and afterwards one of them dieth, her beir within age, and in Mard to the King; The Church voideth, and the King is disturbed in his presentment, he shall have a Scire facias upon such composition, notwithstanding that he be a stranger to it: See F.N. B. 34 H. And by all the Justices, it one recover in Debt upon a simple contract, which have a recover on the last time of the present of the last time. and before execution the Plaintiff is out-lawed in anacion perfonal, the King hall the execution: And fee 37 H.6.26. Where in Debtupon an Obligation it was furmifed to the Court, that the Plaintiff was out law ed: And the Kings Attorney praped delivery of the Obligation, &c.

> Mich. 29, & 30 Eliz. In Communi Banco. LXXXV. Moile and the Earl of Warwicks Cafe.

Quare Impedit was brought to Walter Moile against Ambrok Carl of Quare Impedit. A Quare Impedit was viously of Warter Land now came the Ser-Warwick and the Archbishop of Canterbury. And now came the Serieancs of the Queen, and thewed an Office, to entitle the Queen to have a Wirt to the Bishop, containing such matter, viz. That one Guilford was seised of the Danoz of D. to which the Advomson of the Church was appendent, and that Danoz was holden in chief by linights service, and that Guilford and his Wife sevied a fine thereof to the use of themselves soz their lives, the remainder over in tall to their eldest Don, and that Guilford is dead, but who is dis next well, ignorant: And it was shewed by the Council of the other live, that the truth of the Case was, that the said Guilford was seised of the said Danoz in the right of his Wilse, and so selled the fine, in which Case the said coverance is not within the Statute

tute of 32 H. 8. for it was for the advancement of the pusband, not of the Mite, which Anderson granted. Vide Dyer 19 Eliz. 354. Caverlies Cale, but that is not in the Office: And it was moved at the Bar, that the Office is imperted, because no Deir is found. But Anderson, the Office is lufficient for the king to feife, although it be insufficient for the peir, &c. And it was agreed by the whole Court, that the Court ought not Office trove. to receive the Office, although one would affirm upon oath, that it is the very Office, but it ought to be brought in under the Great Seal of England; and also the Court shall not receive it without a Wirk; and yet Nelson Prothonotary said, that the Statute of Puy and Cry of Winchester was brought into the Court without a Wirit under the great Seal, A Record not ter was brought into the Court without a Alric under the great Seal, a Record not and that was out of the Cower: And in that Cafe also the Justices held, to be brought that if a Accord be pleaded in the same Court where it abides, the other into Court party against whom it is pleaded may plead Nul tiel Record, as if the faid without a Record had bin remaining in another Court, which all the Prothonor taries benied, a that always it had been used to the contrary. At another day the Case was moved again. The Plaintiff in the Quare Impedic counter, that Richard Guilford was seised of the laid Banoz, &c. in the right of Benner his Alife, and so seised, they both levied a fine thereof to a stranger, Sur Conusans de droit come ceo, who rendred it to the bushand and Wife to their lives, the remainder to the Deirs of the body of the bushand, the remainder to the right Deirs of the Dushand, and they so being seised, the Dushand alone levied a fine to a stranger. Sur Conusans de droit fed, the husband alone levied a fine to a stranger, Sur Conusins de droit come ceo, &c. and by the same fine the Counsee render to the husband and Misses in tail, the remainder to the heirs of the body of the husband, the remainder to the right beits of the husband, the purband died seited, the Wise entred and lealed the said Manay to the Plaintist, and then the Church did become void: And now the Queens Serjeants came and shewed unto the Court an Office, which came in by Miximus. In which wit the perclose is, Mandamus vobis quod inspectis, &c. pro nobis heri faciatis quod secundum leges & consucredisem Regni nostri Angliz faciend. Statuetis; And the Office did purport, that the said Richard was sessed of the said apanox, and held the same of the Queen, as of her Castle of Dover, by knights service in chief, and levied the fine, ut supra, and that the said Richard Died, sed quis six propinquis or heres died. Ric. penitus ignorant; and upon that Office prayed a carit to the Bishop tor the Queen: And two Exceptions were taken to the Office, first because it is not found by the said Office that the said Richard Died seiled, in which Case it may be for 1 Cro. 895. any thing that appeareth in the Office, that the late Richard after the faid fine had conveyed his elate in the laid Lands unto others, or that he was diffeiled, &c. See 3 H. 6. 9. If it be not found of what efface the Cenant of the King view feiled, the Office is indufficient. But fee there by Marin, that fuch an Office is good enough for the king, but not for the Deir to fue his Livery upon it. And by Anderson, Periam, and Rhodes, that defect in the Office is supplyed by the Count, for there it is expectly alledged, that the said Richard died seiled. Secondly, because no beit is found by the said Office. Cowhich it was said by the Lord Anderson, that peravoenture at the Common Law the same had been a material Exception. But we ought to respect the Statutes of 32 and 34 H. 8. of Mills. And therefore as to the Mister because is entitled to Primer seisin, because the conveyance was made sor her advanced to the conveyance was t vancement. And by Windham, the Queen in this Cale hall not have Primer feilin, for by the Statute the Queen hall not have Primer feilin, but in firth Cale, where, if no conveyance had been made, the Queen hould have had Primer seilin; but in this Case for any thing that appears befoze us, if this conveyance had not been made the Queen thould not have had Primer seisin, fogalimeth as no weit is found, and if he beed without weit there is no Primer seisin, because there is not any in rerum natura to the livery. Rhodes, Periam, and Anderson contrary; Abmit-

ting that Richard vied withou beir, the Queen thall have Primer feilin a gainst the Wife of Richard, not withstanding the escheat. Walmesley Sergeant, If the Cenant of the King by knights service in chief vieth set sed of other Lands holden of a common person by knights service, without heirs, the king hall not have Primer seisin of such Lands hol-ven of a Subject, which Windham granted: But by Anderson the Lord is put to sue an Ousterle mayne of the Land holven of him. And afterward Exception was taken to the Count, because the Plaintiff hath not averred the life of the Cenant in tail, that is, of Bennet the Wife of Richard, to whom the Land was entailed by the second fine: But that Exception was disallowed by the whole Court, and a difference put by Anderson, lahere a man pleads the grant of an Addowson in gross by Tenant in tail, in such case the life of the Tenant in tail ought to be avered, so by his death the grant ceaseth. But where a man pleads the Lease of Tenant in tail of a Panoz with an Addowson appendant, in Auch cafe fuch averment is not necessary: So accordingly Smith & Scapletons Case 15 Eliz. 431. And here it was moved, if, in as much as by the first fine an estate toy life was rendzed to the Calife, and by the second Fine, in which the ofd not joyn, an effate tail was limited unto her, and Co. 1 Inft.357. now when the Dusband Diethif be thall be remitted to her effate for life; which Windham granted; for that was her lawful estate, and the second estate tortious. But by Rhodes, Periam, and Anderson the collife is at liberty to make her election which of the two estates she will have. And as to the Califf to the Bishop for the Ducen, the Court was clear of opinion, that it ought not to be granted upon this matter: But all the question was, if Regina inconsulta, the Court would or ought to proceed: and it was holden clearly by the whole Court, that the tenure alledged modo & forma, could not be a tenure in chief, for it is lato, that the Land was holden of the King, as of the Castle of Dover, in Capite.

2 Cto. 489.

LXXXVI- Mich. 29 & 30 Eliz. In Communi Banco. Intr. Pasc. 28 Eliz. Rot. 602.

Wait. : Cro. 40, 41.

Vall was brought by F. and his Wife agail Pepy, and counted, that the laid Pepy was feiled, and enfeoffed certain persons to the use of the faid Pepy was feised, and enfeosifed certain persons to the use of immest for life, and afterwards to the use of the Talife of the Plaintist and her Heirs. The Defendant pleaded, that the said feosiment was unto the use of himself and his heirs in fee, &c. without that, that it was to the uses in the Count; Apon which they were at issue: And it was found by herbia, that the said feosiment was unto the uses contained in the Count: But the sury further found, that the estate of the Defendant by the limitation of the use was priviledged with the impunity for Cash, that is to say, without impeachment of Wass. And it was moved, it upon this verdict he Plaintist shall have Audyment: And Anderson and Rhodes Justices, he shall, for the matter in issue is found for the Plaintist, and that is the feosiment to the uses contained in the Count; and this impunity of Cash is a forcein matter not within the charge of the Jury, and therefore the traverse of it but matter of surplusage. As is I plead the feosiment of I. S. To which the other pleads, that he did not respect the traverse of it but matter of surplusage. As is I plead the feosiment of I. S. To which the other pleads, that he did not respect the finding of the condition, so, it was not in issue, and no advantage shall ever be had of such a liberty if it be not pleaded. 30 H. 8. Dyer 41. In Dower the Tenant pleaded, Ne unques self que Dower; the Tenant pleaded, that before the coverture of the Demandant, one A. was selsed of the Lands, of which Dower ture of the Demandant, one A. was selsed of the Lands, of which Dower ture of the Demandant, one A. was feifed of the Lands, of which Dower is bemanded in tail, who made a feofiment to a Granger, and tok the Demandant to Wife, and took back an estate in fee, and died leifed, bab. ing iffue inheritable: Adowalthough upon the truth of the matter the is

not dowable de jure, pet when the parties are at iffue upon a point certain, no foreign or Atange matter not in quellion betwirt the parties Hob. 53. Mall be respected in the point of the Judyment. But if the Defendant down of had pleaded it in bat, he might have foreclosed the Demandant of her Dowet: Vide 38 H.6.27.47 E 3.19. In a Precipe quod reddat in the vetatilt of the Cenant one came and thewed how the Cenant who made des fault was but Cenant for the of the Lands in demand, the revertion in fee to himself, and played to be exceived. The Demandant dis counter-plead the reteit, laying, the Defendant had fee, upon which is was sometimed. And it was found, that neither the tenant, not he which prayed to be received, had any thing in the Land; In that take the Court did not regard the matter which was superfluous in the treater. In the there were at till expand a point tertain, the last in instance. vertier, for they were at iffue upon a point certain, that is, whether the Cenant was leifed in fee, for it was confessed of both fives, that he had an essate for life; and with that matter the Jury was not charge ed, and they are not to enquire of it, and to it was found against the Demandant, for which taute the Receit was granted, 7 H 6,20. The parties were at illue upon adding leiled, which is found by berbit, but the Jury further find, that the other party made continual claim; this continual claim half not be regarded in the point of Judgment, becontinual claim half not be regarded in the point of Judgment, because it was pleaded in avoidance of the vescent. Windh. Justice contrary, Fozasmuch as it appeareth until us about the verdict, that the Plaintist hath not cause of Action, and therefoze he shall not have Judgment; As in Detinue; The Plaintist counteth of a dailnient of his own hand, the Desendant pleadeth, that he both not vetasin, 80c. the Judgment, hut upon a dailment by another hand: But this for Wast shall be taken, not have Judgment: But Rhodes, Periam, and Anderson in the Plaintist shall be taken, not have Judgment: But Rhodes, Periam, and Anderson in the Plaintist, so; same is not in no case the party shall have advantage of such a Liberty of singunity pleaded though found of Mass, if he bo not plead it. And the Judgs are not to meddle with any pleaded though found by verdict. Judgment. to no purpose. And afterwards Judgment was given so; the Plaintist, Hob. 53.

Oven. 91.

Owen. 91.

Mich. 29 & 16 Eliz. In Communi Banco.

LXXXVII. Bracebridge and Baskerviles Cufe.

A Maction of Debt is brought against three Erecutous, one of them debt against preads in Bat a kreodery against dinnels in the Kings Beach: Executors. The other two plead please administ. Against the first plea the Plaintist wid aver room; sind upon the second plea they are at issue. The she will aver room; sind upon the second plea they are at issue. The she will is found for the Plaintist, and as to the other plea, it was thind, that the Desendants have in their hands thirty pounds of the goods of their Cenaris not administred. Note, the vedt in demand was dare hindred pounds, upon which the splaintist had manging organ goods of the Cenaris against the late Erecutous, knowing that many organ goods of the Cenaris have come which the Desendant did demine in And. Wide 1 H. 6.4. At. And be and suite well as the committed, and their same thin intered, and their sound, that the Desendant, at the day of the Cenaris did the sead of the bead in their plans of the Cenaris should be sound they administred, and the was count, that the Desendant, at the day of the Cenaris did the same of the dead twenty marks and no more, and gave banges size warks. There the Plaintist had Judgment for the twenty marks of the goods of the dead twenty marks, that the Plaintist should be americaded as the other twenty marks, that the Plaintist should be americaded as their found accordingly: After warbs warbs

Scire facias, to have Execution of Affets come to Executors hands, after riens enter maynes plead-

wards goods of the Tellatog came to the hands of the Grecutogs: Now the Plaintiff upon a furmile thall have out of the fame Record a Scire facias to have execution of the fato goods: But fee 4 H.6. 4 contrary, for there it is faid, that upon the matter the original is betermined, and so no Record, upon which a Scire facias can be grounded: And see Firsh, addinging the Case Scire facias, 25, by the derdict and the Judgment the Driginal is abated: Vide 7 E. 4. 9. by Moile, according to 33 H.6 and so 46 E. 3. 9. by Belknap. And the Lord Anderson demanded of the Prothonotaries the manner of the entry of the Judgments given in such Cases, who said, that their Entry is in this manner: (i.e.) Quod querens recuperer, that which is express found by the verdict, but nothing of the residue, for of that no mention is made at all. And nothing of the relidue, for of that no mention is made at all. And the Court seemed to be of opinion, that where, upon nothing remaining in their hands, pleaded. It is found that some part of the sum in demand is in the hands of the Executors, there the Plaintiff upon a surmise of goods come to the hands of the Executors shall have a Scire facias; contrary, where upon such tisue, it is found fully for the Defendants, that they have nothing in their hands.

3 Cro. 272. Hob, 199. 1 Cro. 3 1 8.3

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8 Co. 134.

Mich. 29 & 30 Eliz. In Communi Banco.

### LXXXVIII. Fordleys Cafe.

Tender plcaded. 9 Co. 79.

Fordley brought bebt upon an Obligation, the Condition was, that if the Defendant, viz. the Obligor beliver unto the Plaintiff the Obligee, at a fuch a day and place, twenty pounds or ten Kine, at Dy. 25.2 the then choice of the Obligee, &c. that then, &c. The Court, was 1 lnft 207.
Post. 69.70. 1 clear of opinion, that the Defendant in pleading the performance thereof ought to tender to the Plaintist as well the twenty pounds as the ten kine, and for default thereof Judgment was given against the Defendant. See the Rumber Koll T.29 Elizapart. 324 vide 14 E.4.4 b.

Mich. 29 & 30 Eliz. In Communi Banco.

# LXXXIX. Barker and Pigots Cafe.

E Dward Barker brought Debt against Rich. Pigot Executor of the Will of R. The Defendant pleaded, that we had finlly administred the goods of his Cestator E upon which they were at issue, which was sound for the Plantist. And it was moved in were at tille, which was found to the Plantiff. And it was moved in arrest of Judgment, that here is not any issue joyned, which answers to the Action, so the Action is brought against the Defendant in the quality of the Executor of an Executor, and the verbic extends to the Defendant, but is Executor of the laid E for it is found by it, that the Defendant bath fully administred the goods of his Testatrix, without any enquiry of the Administration of the goods of the first Testator R. in which capacity the Defendant is charged. So as here the Writcharges the Defendant in the quality of an Executor of an Executor and in respect of the first Testator, and the issue and verbic both concern the last Testator. And the whole Court was clear of opinion, that tog and in respect of the first Cenatozand the some and verour vory concern the last Cenatozand the whole Court was clear of opinion, that although that now after verdict fee-tail be saved, and no Judgment shall be given uponit, yet here the Court shall give Audgment as upon a Nihildicit, in which case the Erecution of the Judgment, shall not fail upon the goods of the last Cenatozaccozding to the verdict, but shall follow the nature of the Action which was brought against the Defendant as Executoz of an Executoz. and do in the other thenty matals, that the

able nothing in their panel when he form acceptingly: Mire-

Execution must follow the nature of the Action.

Maring

Debt.

Mich.

s : figgrand alment

## Mich. 29 & 30 Eliz. In Communi Banco.

### XC. Thacker and Elmers Cale.

Hacker recovered in an Affige of Novel diffeilin againff Elmer cettain Re-diffeilin, Lands in Hackney, and had erecution: Elmer entred upon Thacker and the Judgano outted him, and Rediffeised him. Thacker te-entred, and afterwards ment in it. brought a Rediffeisin; And it was moved, whether Thacker against his Entry might have a Rediffeilin : And the opinion of the whole Court was, that he might well maintain the cazit, for he is not thereby to recover any Land; but the Defendant of that Redisselin being convicted, shall be fired and imprisoned, and tender double damages: Vide Book of Entries 502. the Judgment in a Redisselin is, Quod recuperet feilinam fiam of the Mand.

### Mich. 29 & 30 Eliz. In Communi Banco.

## XCI. Blaunchflower and Fryes Cafe.

Blaunchflower brought debt upon a Bond against Elinor Frye, as Eres cutric of one Andrew Frye her late busband, who pleaded, that this Debt. Cuttic of one Andrew Frye her late Husband, who pleaded, that this cutit was brought 9 July, 27 Eliz. whereof the had notice the first of October after, within which time one Lawrence had brought an Distinal cultit against the said Elinor as Administratics of the said Andrew; And after the bringing of the wit, the Bishop of Bath and Wels committed Administration of the goods of the said Andrew to the said Elinor, which Elinor confessed the Action, upon which Judgment was given for the said Lawrence, beyond which she had not gods, upon which the now Plaintist did demur in Law. And by Anderson, the Recovery pleaded in bat shall not bind the Plaintist, because it appeareth unpon the plead of the Defendant, that the Administration was committed after the of the Defendant, that the Administration was committed after the Wit purchased, which matter if the Defendant had pleaded, Lawrence Administration could not have had Judgment to recover. As where there are three granted, penceutous, and debt is brought against two of them, if they do not dant the Writ. plead that matter in abatment of the Ulrit, but plead, &c. of confess the Anion, so that the Plaintist hath Judgment to Accourt, that Kercovery hall not bind a stranger who hath cause of Anion against them, but that he may well falsify it; and pet it was said that in such Case, the Defendant by the obtaining of the Letters of Administration had made the Ulrit good against her, vid. 13 H.4. Fire. Executors, 118. Animalistation committed before the Carit purchased shall abate the Writ brought against the Defendant as Executor, but such Administration obtained, depending the Writ shall not abate, it, vid. 2 H.6.3. 2. R.3.20. Another matter was moved by Anderson, because the Defendant had pleaded a Recovery by confession had against her, without Aneroment that it was a true Debt, in which Case Covin is presumed Windham and Periam were of apinton, that the matter of Couili dught to come in on the part of the Plaintist, which Anderson denged, vid. 9 E.4. 13, 14, 33 tie Cardinalls Case. Wit purchaled, which matter if the Defendant had pleaded, Lawrence Administration 13, 14. 33. the Cardinalls Cafe.

In Communi Banco Intrat. Mich. 26 & 27 Eliz. Rot. 12.

XCIL Baffet and Kerns Cafe. Dates 229

Roll. Tit.EleQi

Baffet the Executor of Morisheppheard brought bebt upon a bond against cutors.

Kerne, the Case was: That Kerne was bound to Morisin a Obligation 1 Cro. 819 WISTED upon

1 Roll. 446. Tit. Condition.

Election.

upon Condition, that the laid Kerne should pay to the laid Morris his Executors, &c. at the choice and election of the laid Morris, within a month after the death of the Lady Kerne, thirty pounds, or twenty kine, to which the Defendant pleaded that the islaintiss within the month after the death, &c. did not make any choice or election, upon which the Plaintiss did demunt in Law: And the Tourt was clear of beginnen, that it was a good Plea in Bar, so, the Oblique is not bounden to make a tender of both, viz. of the mony and the kisses within the time limited; as if I be dounden to you, to make election within the time limited; as if I be dounden to you, to make election within the time limited; as if I be dounden to you, to make unto you such further assurance within such a time by Fine or Feosiment as you shall chuse, it behaveth you to make election of pout assurance, Fine, or Feosiment, and in the principal Case, the election of the Plaintiss out the operated the Defendant wild the Lord Lides Case, 18 E.4. 15.17.20.21. There the Defendant was bound to the said Lord to shew his Evidences touching such a pouse to the said Lord or his Council, the election was to the Defendant to whom he would shew them; and there by Brian, if I be bound to you to marry your Daughter, or to go to York on your Baughter hap do it, or go to York, which Coke granted, vid 13 E.4.4 There the condition is in the dispunctive, before the day of petformance the Election is to the Designer; will be elected the day to pay to you luch a day ten pounds in Said, at Silver, if you do not make bould election before the day, pet the duty termains payable, so the the ping to be paid is parcel of the penalty quod silvencessum; and all the the pincipal Case, the Court was clear of opinion, that upon this matter the Plaintiss should be batted. See besore this Cerm, Forceleyes Case.

Mich. 29 & 30 Eliz. In Communi Banco.

XCIII Searches Cafe.

Antea 68. Hebeas Corpus.

Habeas Corpus issued both out of the Court of Common Pleas, to the Steward and Marthal of the House, &c. for one Wilsister, which was returned in this manner, viz. quod Domina Regina per litteras sus Patentes suscept, in protectionem suam regiam, Johannem Madde, and the sureties, and of her surther grace by the said Letters, voluit, that it any person thomso arrest, or cause to be aerested the said Joha Madde of any of his sureties, that then the Marthal of her bouse, or his laidful Deputy might arrest every such person, and betain them in Prison until such person though answer before the Privy Council so the contempt; And that the said William Search caused one Joha Preson one of the said merces of the said Joha Madde to be attested, &c. And upon that return, the laid William Search was discharged; And also because that after the said discharge the patties caused the said William Search to be attested again for the same cause, that is, by colour of the said protection; An Actachment was granted against them.

Mote, that the same Term, Mich. 29 & 30 Eliz Another Habeas Corpus was directed to the Sections and Warthal of the Barthalley, for the work, who made return, that the said Howel was committed to his custopy, per mandatum Francisci Walkingham Milita Principalis Secretarij, & unius de privato concilio Dominz Reginz, and that return was by the Court halven unflictent, because the ranke upon which he was rome mitted, was not set down in the return; and therefore way was given to

amend

amend the return, and now they returned the Wirit in this manner, ff. infra nominatus Johannes Howel commissus fuit, &c. ex sententia & mandato totius concilii privati Dominæ Reginæ; Ita quod corpus ejus habere non possumus, &c. And that return was also holden by the Court to be insufficient, for (by whatfoeber person. of by what means soever he was committed) the conclufion of the return ought to be, Corpus tamen cius paratum habeo, and if it thail seem good to the Court, that the Prisoner shall have his Priviledge, and shall be dismisit, he shall be discharged, but if not, then he shall be remanded. And the Court took a difference, where one is committed by one of the Privy Council, so, in such case the cause of the committing ought to be set down in the return; But contrary where the party is committed by the whole Council, there no cause need to be alleadged.

# Mich. 29 & 30 Eliz. In Communi Banco.

XCV. Bret and Audars Cafe.

Bet brought Debt upon an Obligation against Audar, the Condition Debt upon a of which Obligation was, that the Detendant should stand to the Bond to peraward, &c. And the Arbitrator awarded, that the Defendant should pay form Award. award, &c. And the Arbitratoz awarded, that the Defendant hould pay form Awarded the Plaintiff ten pounds, without naming day oz place; And as to that the Defendant pleaded, that he was always ready, and pet is, &c. without thewing any tender: And it was moved, That although that would have been a good Plea in bebt upon an Arbitrament, as the Cale is, 7 H. 4 97. See 21 E. 4. 40, 41, 42. Pet now by the Obligation and the Condition of it, the sum is payable in another manner than it was before, see the pleading of the Cale, 21 E. 4. In Debt upon an Obligation to perform the Award; Chat the Award was made between the Terms of Pasch, and Trinity, and he, the eighth of September after, tended the twenty pounds, and the Plaintiff refused it. And the Lord Anderson put a difference between the Cale, in 22 H. 6. 57. Tender, and the Cale at the Bar, so in our Cale the Obligation doth precede the duty which accrueth by the Award subsequent, but in the sozmer Case the duty did precede the Obligation which was made so the surther assurance of the duty: And here the Defendant dught to have pleaded the tender, and see 14 E. 4. 4. A. Is bound unto B. that, where pleabed the tender, and see 14 E. 4.4. A. is bound unto B. that, where he hath granted to the said B. a Ment-charge out of such Land, now if the said B. hall enjoy the said Ment according to the form and effect of the faid Stant, that then, &c. there he needs not to plead any tender, for the Rent is not payable in other manner than it was before contrary if the Condition had been for the payment of the Annuity: And of that opinion was the whole Court, that he ought to have pleaded a tender. Another matter of the Award was, that the laid Audar hould yield up, furrender a relinquish to the Plaintiff all fuch houles and Cenements up, lutrender e relinquish to the Plaintiss all such boules and Cenements which he had in his possession by reason of the custody of the sate Plaintiss. As to that the Defendant pleaded, that he had pielded up, &c. All such boules, &c. generally without shewing which in certain; And son that cause the Court was clear of opinion, that the Plea was not god; which see 9E.4.16. If I be bounden upon condition to enseoff the Obligee of assuments, which were to 1.8 in pleading the performance of that Condition, I ought to shew what Lands and Cenements in certain, son they pass out of me by the Feossment; See also 12 H.8.7.13 H.8. Non damnification, son they pass out of me by the Feossment; See also 12 H.8.7.13 H.8. Non damnification, to which the Award was, Chat the last Audar should acquit where no Plea. and discharge, and save harmless the Plaintiss of such an Obligation, to which the Defendant pleaded; that Querens non suit damnificatus, and that Plea was holden insufficient, so he ought to have shewed, how he had discharged him, and it is not sufficient to answer only to the damnification, as if I be bounden to convey unto you the Manage.

1 Roll. 446. Tit. Condition.

Election.

upon Condition, that the said Kerne should pay to the said Morris dis Erecutors, &c. at the choice and election of the said Morris, within a month after the death of the Lady Kerne, thirty pounds, or twenty kine, to which the Defendant pleaded that the islaintist within the month after the death, &c. did not make any choice or election, upon which the Plaintist did dinnut in Law: And the Court was clear of depinion, that it was a good Plea in Bar, for the Odingor is not doubten to make a tender of both, viz. of the mony and the kithe; but the Odligee himself is dounden at his peril to make election within the time limited; As is I be bounden to you, to make unto you such surther assurance within such a time by fine or fredsheart as you shall chuse, it behoveth you to make election of your assurance, fine, or feestiment; and in the principal Case, the election of the Plaintist ought to precede the tender of the Defendant was bound to the said Lord to she his Evidences touching such a boule to the said Lord or hew his Evidences touching such a boule to the said Lord or his Council, the election was to the Defendant to whom he would shew them; and there by Brian, if I be bound to you to matry your Daughter, or to go to York on your Businesses upon request, before your equire me to marry your Daughter I may bo it, or go to York, which Coke granted, vid.

13 E. 4.4. Albert the condition is in the disjunctive, before the day of petformance the Election is to the Defendant, but if at the day be make default, the Election is to the Defendant, but if at the day be make default, the Election is to the Odinative, defore the day of petformance the Election is to the Odinative, defore the day of definition, if I be bound unto you in an Odinative, defore the day be make pour election before the day, yet the duty temains dayable, soft the thing to be path is parcel of the penalty, quod suit concessor; and as to the principal cale, the Court was clear of opinion, that upon this matter the Plaintist should be batteb. See besofe

Mich. 29 & 30 Eliz. In Communi Banco.

XCIII Searches Cafe.

Antea 68. Hebeas Corpus.

Habeas Corpus issued forth out of the Court of Common Pleas, to the Steward and Marthal of the Bouse, &c. for one Wilsissich, which was returned in this manner, viz. quod Domina Regina per litteras sus Patentes spicepit, in protectionem suam regiam, Johannem Mabbe, and his sureties, and of her surther grace by the said Letters, voluit, that is any person should arrest, or cause to be aerested the said John Mabbe or any of his sureties, that then the Marthal of her Douse, or his saidful Deputy might arrest every such person, and betain them in Prison superson fluch person should answer before the Prior Council for the rantempt; And that the said William Search caused one John Presson one of the said such that retiten, the laid William Search was discharged; And also because that after the said discharge the patties caused the said william Search to be arrested again so the same cause, that is, by colour of the said protects on; An accomment was granted agains them.

Habeas Corpus. One Howel, who made return, that the faid Howel was committed to his custody, per mandarum Francisci Wallingham Mikis Principalis Secretarij, & unius de privato concilio Dominæ Reginæ, and that return was by the Court halden unfusitiont, because the ranke upon which he was committed, was not set down in the return, and therefore day was given to amend

amend the return, and now they returned the Whrit in this manner, ff. infra nominatus Johannes Howel commissus fuit, &c. ex sententia & mandato totius concilii privati Dominæ Reginæ; Ita quod corpus ejus habere non possumus, &c. Anti that return was also holden by the Court to be insufficient, for (by whatthat feeturn was also holden by the Court to be industrient, to? (by what soever person, or by what means soever he was committed) the conclusion of the return ought to be, Corpus tamen ejus paratum habeo, and if it shall seem good to the Court, that the Prisoner shall have his Priviledge, and shall be dismis't, he shall be discharged, but it not, then he shall be remainded. And the Court took a difference, where one is committed by one of the Privy Council, so in such case the cause of the committing ought to be set down in the return; But contrary where the party is committed by the the made Council, there no sause need to be alleadored. committed by the whole Council, there no cause need to be alleadged.

# Mich. 29 & 30 Eliz. In Communi Banco.

### XCV. Bret and Audars Cafe.

Ret brought Debt upon an Obligation against Audar, the Condition Debt upon a of which Obligation was, that the Defendant should stand to the Bond to peraward, &c. And the Arbitratoz awarded, that the Defendant should pay form Award. unto the Plaintist ten pounds, without naming day oz place; And as to that the Defendant pleaded, that he was always ready, and yet is, &c. without shewing any tender: And it was moved, That although that would have been a good Plea in debt upon an Arbitrament, as the Take is, 7 H. 4. 97. See 21 E. 4. 40, 41, 42. Pet now by the Obligation and the Conduction of it, the sum is payable in another manner than it was before, see the pleading of the Case, 21 E. 4. In Debt upon an Obligation to perform the Award; That the award was made between the Terms of Pasch, and Trinity, and he, the eighth of September after, tended the twenty pounds, and the Plaintist resuled it. And the Loid Anderson put a difference between the Case, in 22 H. 6. 57. Tender. and the Case at the Bar, so in our Case the Obligation both precede the duty which accrueth by the Award subsequent, but in the former Case the duty did precede the Obligation which was made so the surther assurance of the duty: And here the Defendant ought to have pleaded the tender, and see 14 E. 4. 4. A is bound unto B. that, where he hath granted to the said B. a Kent-charge out of such Land, now if the said B. shall enjoy the said Kent according to the form and effect of the said Spant, that then, &c. there he needs not to plead any tender, so the Bent is not named to the reason to plead any tender, so there he needs not to plead any tender, so there he needs not to plead any tender, so there he needs not to plead any tender, so there he needs not to plead any tender, so there he needs not to plead any tender. the faid Stant, that then, &c. there he needs not to plead any tender, for the Kent is not payable in other manner than it was beforescontraty if the Condition had been for the payment of the Amuel than of that opinion was the whole Court, that he ought to have pleaded a tender. Another matter of the Award was, that the laid Audar fhould yield up, flurt index a relinquish to the Plaintist all such boules and Tenements which he had in his possession by reason of the custody of the laid Plaintist. As to that the Desenvery pleaded, that he had nielded up, &c. All tiff: As to that the Defendant pleaded, that he had pielded up, &c. All fuch boules, &c. generally without thewing which in certain; and for that cause the Court was clear of opinion, that the Plea was not god; which see 9E.4.16. It I be bounden upon condition to enfeoff the Obligee of all Lanus, a Cenements, which were to I. Sin pleading the performance of that Condition, I ought to shew what Lanus and Cenements in certain to the performance of the Condition, I was harden to she what Lanus are also as the performance of the condition. tain, for they pass out of me by the Feofiment; See also 12 H.8.7.13 H.8. Non damnifica19. Another point of the Award was, That the said Audar should acquit tus, generally, and distharge, and save harmless the Plaintist of such an Obligation, to which the Defendant pleaded, that Querens non fuit damnificatus, and that Plea was holden insufficient, for he ought to have shewer. ed, how he had discharged him, and it is not sufficient to answer only to the Danmification, asif I be bounden to convey unto you the spanoz

of B. in pleading the performance of the condition, it is not lufficient to spew, that I have conveyed the faid Banoz, but to spew by what manner of conveyance, viz. by fine, or feosiment, &c. 22 E443. If the condition be to discharge the Plaintist, &c. then the manner of the discharge ought to be spewed, but if it be to save harmless only, then non damnificant generally is good enough, 40 E 2.20.38 H.6.39. The condition of an Odigation was, that the Odigor would keep without damage the Odigoe, of such a sum of mone against be whom he was bounder for the payment of it, and the save pleaded that at such a day, &c. the laid B. at his request delibered the Odigation to the Plaintist in sew of an acquittance, without that, that the Plaintist was damnified by the said Odigation, before the delibery of it, and it was holden by the Court, that if the Defendant had pleaded, that he had kept the by the Court, that if the Defendant had pleaded, that he had kept the Plaintiss without damage, and had not shewed how, that the Plea had not been good. See 12E 4 40. The Logo Listes Case. And afterwards Judgment was given for the Plaintiss.

Mich. 29 & 30 Eliz.

XCVI. Heydons Cafe.

R Alph Heydon Pretending title to certain Land, entred into it, and made a Leafe of it to try the title: Apon which his Leffee brought an Sectione firms, in which the parties were at Mue; And now at the day of the Enquel, the Juross were called, and but five of them appeared, whereupon, the Defermant came and hewed to the Court, that peared, whereupon, the Detendant rame and heused to the Collet, that the fail Heydon by his friends and Servants, had laboured the Jury, not to appear, and that for the further decation of the Oefendant who had four elevides in afficients of his title, that the late Heydon to produce the Jury not to appear, had armifed to them, that he and the Oefendant were in course of an agreement, whereas in truth no firth communication of agreement had any time passes between thein: And all this was openly depoted in Court, as well upon the oath of the Defendant himself as upon the oath of one of the Jurozs, upon which the Court awarded an Attachment against the said Heydon, to answer the concempt; And also granted to the Defendant, that he might fue a Decem tales with provide, for his own expedition.

Mich. 29 & 30 Eliz. In Communi Banco.

XCVII. Smith and Kirfoots Cafe.

in Jan

Debt upon Arbitrament.

So that the Defendant and he, imposserunt se in arbitrium, ordinationem, so judicium Johannis Popham ar. arbitratoris indifferenter electi, de jure, titulo, & inverse in quibuldam Messuagis, &c. Albu takting upon him the burthen of the Arbitration, ordinavit, that the lath Defendant mould pay unto the Plaintiff ten potunds, in plenam hisfactionem, &c. and thereupon he bianable his Ariok; It was moved by Walmesley Serieant, that the Declaration is not sufficient, for it appeareth that the Arbitrament set forth in the Declaration is utterly void; because whereas ten pounds is awarded to the Plaintiff, nothing is awarded to the Decembert, and so the Award unequal, and so void. But the Court was clear of opinion, that notwithstanding that such an Arbitrament be void in Law, petit may be so any thing that appeareth, that the available is good enough; for the Plaintiff is not to hew in his Declaration (cro. 504.) 355. All the award, but such part only of it which both entitle him to the thing,

thing, &c. and if the Defendant will impeach the Award for any thing, that is to come in on his part, vide. ac. Book of Entries, 152. 123. vide. for the Arbitrament, 39 H. 6. 12. by Moile, 7 H. 6.41.

Mich. 29 & 30 Eliz. In Commani Banco.

### XCVIII. Arundel against Morris.

Richard Arundel flied an Audica Overela against Morris, and it was compressed bended in the Writs Chat Morris had recovered against him a certain Debt, and that he was taken by a Capias ad satisfaciendum at the slitt of Audita kure the said Morris, by Hickford Sherist of the County of Gloucester; who let in him go at large, &c. And they were at issue, whom the voluntary escape, & it was found for the Plaintist. It was objected in arrest of Judgment, that the write of Audita Querela is not good, for the words are, that the Plaintist, captus suit virture brevis nostri judicialis; whereas this word judicials) is not in the Register; but only brevis nostri de capiendo. But hy the whole Court, the Writ is gwo, for the word judicialis) is but a word of surplusage; and shall not make noto the Writ: And afterwards Judgment was given sor the Plaintist.

Mich. 29 & 30. Eliz.

### XCIX. Brook against King.

I Debt upon an Obligation by Brook against King, the Defendant pleaded that the Bond was envoyeed, with such condition, viz. That u the said Defendant King shall produce one i. S. to make reasonable recompence to the Plaintist so; certain Beasts which he wrongsully sink from the Plaintist, that then, &c. And he said in said, C hat the said I. S. had stolen the said Beasts from the Plaintist, and thereof he was envicted, &c. and so the condition being against the Law, the Obligation was bold, upon which the Plaintist bid demure in Law. And it was argued by the whole Court: C hat where the condition of an Obligation shall be said against the Law, and therefore the Obligation word, the same ought to be intended where the condition is express morths words, and in terminis terminantibus, and not for matter out of the Post, 1031 condition, as it is in this case, and Ludyment was given so the Plaintist. condition, as it is in this cale; and Judgment was given for the Plaintiff.

Mich. 29 & 30 Eliz. In Communi Banco.

### C. Hawks against Mollineux.

Is a Replevin by Hawks against Mollineux who above to Damage' fefant; The Plaintist in Bar of the Aboung, pleaven that Six Gervale Paston knight, was seised of a spessinge and twenty Acres of Land; And that always those whose estate, see have used to have Common in Replevin, the place where, see for all their Cattel commonable in this manner, yar. Is, and the said Land be sowed by assent of the Commoner, then no Common until the Combe mowed, and when the Com is mowed, then Common until the Land shall be sowed again by assent of the Common exception was taken to this prescription was found by stervice, and exception was taken to this prescription because against common right, so as a man cannot sow his Land without the same of another. But the enception was bisationed by the Court; so, the prescription was poinen to be good by the whole Court, so, by the Land of the Land, the Owner of the Land cannot plow the Land where another bath Commons but here is a benefit to each party, as well so the Dwner of the Land as gainst the Commoner, as so, the Commoner against the Cenant of the Land, so, so, as well so, the Dwner of the Land.

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## Intr. Pafch. 29 Eliz. Rot. 1410. In Communi Banco.

### CI. Baldwin and Cocks Cafe.

Replevin. Owen 52. Post, 225. I Int. 225.2.

5 Co. 9 1 Brown.3 1-46 47. 80. 101. 2 Br. 83. 148

Baldwin was Plaintiff in a Replevin against Cocks, and upon the pleading the Cale appeared to be this, Chat Sit Richard Wayneman was lessed of the place where, &c. and leased the same to one Truepeny and the Cliz. Reade for term of 21 years, if the laid Truepeny and Eliz. or any child or children betwirt them begotten should live to long; Eliz. within the term died without ssue; If now the term for 21 years be determined by mass the Question. And the Lord Anderson concessed, that the estate so years is not determined by the death of Elizabeth. And it was arguent that we have the termined by the death of Elizabeth. And it was arguent the state of the same that was arguent. ed by Shuttleworth Serjeant, that upon the matter the term is determined: And he put the Cale of the Lord Bray, 3 Eliz. Dyer 190. Where the Lord Bray fold unto four great Lords the marriage of his Son and Deir, to the intent to be married at the appointment and nomination of the faid Lords, the Lord Bray died, one of the faid Lords before any marriage, or appointment, or nomination, died, the Son is married by the appointment, sc. of the furbiding Lords; That marriage is not within the intent of the Covenant, and adjudged that upon that marriage no use shall accrue. And also be cited this Case adjudged in the Lings Bench. The administration is committed to one durant minore real of two Infants, one of them becomes of full age, the power of the Moninsseries, one of them becomes of full age, the power of the Moninsseries, and the construction of this lease and grant religious in this point, steps word (Or) either shall be taken as disjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as adisjunctive as it is in its nature, or as a conjunctive; and if it be taken as disjunctive as it is in its nature, or as a conjunctive; and if it be taken as disjunctive as it is in its nature, or as a conjunctive; and if it be taken as disjunctive as it is in its nature, or as a conjunctive; and if it be taken as disjunctive as it is in its nature, or as a conjunctive; and if it be taken as disjunctive as it is in its nature. faid Lozds, the Lozd Bray Died, one of the faid Lozds befoze any martithe Law thall respect the existency of the child in the mothers belly: And see 7 Eliz. Plow. 289. where a Copulative thall be taken in the victum tive, as a covenant with B to make a lease for years of such Lands to the said B and his Asigns. the same thall be constructed, or his Assigns. And it was clearly agreed by the other parties, that if the words had been, ICT riepeny, Elizabeth, 93 any child or children, etc. follong, etc. updathe beath of any of them the interest is determined: And by Rabell, Bertam and Windham in the principal Case, the lease shall endure as long assump of the persons named in the Provision shall live, and so seemed in better the meaning of the parties. And and order in the more of the persons of the parties. finniation, in the Habendam to the fait Truepeny and Biz for all peaces a feft Sancti Johannis Baptist. post terminum annorum (the expitation of a formet term) if the fait Truepeny and Elizabeth, or any child see. And he conceins that the limitation did no to the commencement of the lease only, mad enot to the expiration or determination, as if the lease should not

begin if they all were not alive at the commencement of the leafes

And off the other Austices were clear of the contrary opinion, for by them this limitation shall go, and shall be referred to the vetermination of the Lease, and not to the commencement of it.

Anderson, As any cause house be, form because thouse much

the years be encurred, not with fanding the beath of the Busbando mile,

Exposition of words in deeds.
244.
Post. 251.
I Roll. 444.

it was because the feale was intended a common advancement toboth,

for it should be in vain to name the Celife in the lease, if the lease should rease by the death of the Busband. And afterwards after many arguments on both sides, it was adjudged, that by the death of Elizabeth, the lease was not determined, for the disjunctive before (Child) makes all the limitation in the disjunctive.

Mich. 29 & 30 Eliz. In Communi Banco.

CII. Zouch and Bamfields Cafe.

De Cafe between the Lord Zouch and Bamfield was now atgued by a And. iss. the Justices. And Rhodes the putthe Justice argued, that the Logd is Co. st. Zouch the Demandant should be barred. Four Exceptions have been taken to the bar: First, because it is not shewed in the bar that the mopety of those sixty messuages, &c. of which he pleads the Fine, was parcel of the Manoz at the time of the Fine levyed; soz the pleading is, that the Grandfather of the Demandant was leifed of the lato Apanot, unde medietas prædictorum 60. melluagiorum, &c. a tempore cujus contrar. memoria, &c. was parcel, and so seised de manerio prædict. unde, &c. Finis se levavit; and he concessed that the pleading, notwithstanding that was good enough; sot he hath said as much in estent, contrar. cujus memoria hominum non existic, in the present tense, which amounts to this, that men cannot remember, &c. but that this movety was parcelof the said Manion: As 10 H. 7 12. In an Assis of Common, the Plaintist makes his title, that he was seised of a Messuage and Carbe of Land in U. to which the said Common is appendant, and that he and all his Ancestors, which the laid Common is appendant, and that he and all his Ancestors, and all those whose estate he hath, &c. have used to have Common, &c. Exception was taken to the title, because the Plaintist doth hot shew in his title, that he is seised of a Apelluage, &c. for ishe hath aliened the Pessuage the Common passeth, so is he be discised, &c. but the Exception was not allowed, for it appeareth upon the words of the title, that the Plaintist is seised: i. all those whose estate he bath in the present tense, which words do shew and declare possession and seisin in the Plaintist, the time of the plea pleaded; so in this case, the substance of the words, in which the defect is assigned, is us supra; That men cannot remember, but that this movety was parcel of the Panor, and then the words after, unde, &c. reddidit Manerium prædict, unde, &c. shall have the same construction as before. Periam conceived, that the Bat is notight for the cause asoresaid, for it is not so pleaded, that we can adjudge upon it, that the said movety was parcel of the Panor, at the time of the Fine tedped, and then the Fine cannot extend unto it. And the reason alledged by my brother Rhodes shall not help that matter, so the said moves cannot be construed otherwise, but that no man can remember but the by my blother Rhodes shall not help that matter, for the said words caunot be construed otherwise, but that no man can remember but the said movery was parcel, but not that it is parcel, or at the time of the fine sewed was parcel. Vide 32 H. 6.24. In Crespals the Defendant pleaded, That A. was seised of the Manor of D. whereof the place, &c. is parcel, he ought to say expessly, that the place where was parcel of the Wanor at the time of the trespals supposed. Windham concessed, that the plea was good, and that it appeareth well upon this plea, that the said intoyety was parcel of the said Wanor at the time of the Fine seved, for he pleads, that the Sandsather of the Demandant was seried of the Manor of N. Unde medicas predictorum, &c. a tempore cipis contrar. memoria homiaum non existin sas secsistens, Finis selevavir, he seihrus; i. e. set sen of the Manor in such sort. As the Manor is set seithes, and fed of the Panoz in such fort, as the Panoz is set forth before, and that is good pleading, especially by way of dar, which it it be good to a common intent, is well enough; and the mord sunds, &c.) so often repeated after shall be idle and to no purpose if the Kaip shall not give such a construction. Anderson to the same purpose. And he much respect

Averrment

relyed upon the reason of Windham, and so letted. Another Exception was taken to the Bar, because in pleading of the fine, it is not averted, that the Conusor at the time of the fine leved was of full age, out of prison, &c. And as to that Rhodes took the difference between the pleads ing upon the Statute of 1 H. 3. where these disabilities are within the purview of the statute, and upon the Statute of 4 H. 7. where in the body of the Statute no mention is made of them, but afterwards an especial Exception by it selfs and he cited the opinion of the Justices especially of the statute of the statute of the sufficient of the sufficien ces, especially of the Lord Dyer in the Case reported by Plowd. 5 Eliz. 365. betwirt Stowel and the Lord Zouch. Periam to the same intent, and upon the same reason, and further he said that although the Statute of 32 H. 8. contains inits purview the same disabilities; Pet this five is pleaded upon the Statute of 4 H. 7. and therefore the pleading of the same that not be directed nor waged by the Statute of 32 H.8. which doth not after the pleading of a fine which was before, nor the reason of it; for it alter the pleading of a fine which was before, not the reason of it, for it is not properly a Statute, not do fines teceive any strength or virtue by it, but is but a construction of the laid sommer Statute. And he put the Case betwirt Hide and Umpton; where Umpton mean betwirt the Statutes of 32 and 34 H. 8. Declared his Will of all his Lands, which devise if it be good for two parts of the Land devised it was doubted, or that the bevile should be void for the whole afterwards came the Stat. of 34 H. 8. and cleared the doubt, for to that intent it was made; and in the laid Statute shall not extend to the Will or the Devise of Tho. Umpton, or shall be presudicial or burtful to any person or persons for any Lands &ccontained or specified in the last will or Devise, but that the said Will and Devise shall stand, remain and be in the same case, in sorce and effect in the Law, as the in the faid will or Devile, but that the faid will and Devile chall stand, remain and be in the same case, in force and effect in the Law, as the same was before the making of this Ac. Now, notwithstanding that Proviso, the Will of Umpron was holden good but so, two pacts, so, so the Statute of 34 H. 8. construed the Statute of 32 H. 8. So in our Case, the Statute of 32 H. 8. of fines construes the Statute of 4 H. 7. to ettend to fines seved by Tenant in tail, therefore the estate tail stall be admigred in Law to be bound by the Statute of 4 H. 7. and not by 32 H. 8. which is rather a Judgment upon the sate Statute of 4 H. 7. than any new Statute. Windham to the same intent, and he relyed upon the reason asozesate. And surther said, if one will plead a Lease mode by Tenant in tail upon the Statute of 32 H. 8. he need not to a very the full age of the Lesso, and pet that quality of suil age is within the purview of the said Statute. First all Leases to be made, &c. by any person being of sull age, &c. and so is the common use of pleadings. And of the same opinion was the Lozd Anderson souther Exception, for the realbing, and upon the difference asozesaid. Another Exception, for the realbing, and upon the difference asozesaid. Another Exception was taken to the Bar, because it is not alledged, that the said fine was engrossed in the same Term in which it was seved. And as to that, it was holden by Redder, that in pleading of a fine it needs not that, it was holden by Rhodes, that in pleading of a fine it needs not to them any engrolling of it; and so are many Presidents, vide Plowd. Com. Smith and Stapletons Case, 15 Eliz. 428. Calhere a fine was pleaded, Quedam finalis concordia facta fuit in Octav. Sancti Hillarii 35 H. 8. & postea a fie Pafch in quindecem dies 36 H 8. concessa & recordata, &c. Super quem finem prosie Pasch, inquindecem dies 36 H 8. concessa & recordata, &c. Super quem sinem proclam, secondom formam Statuti sactse suer. viz. prima proclam. 7. Maii. Term. Pasch. 16 H. 8. initipout any mention of the engrossing of it: And see the Case betweet Stowel and the Lord Zouch, where the Fine is pleaded as it is pleaded in the Case it is pleaded in the Case of Pasch. 30 H. 8.) ingrossaus foir, & postea in Curia prædict. secundum sormam Status, &c. sectus, & proclamatus suit, & postea in Curia prædict. secundum sormam Status, &c. sectus, & proclamatus suit, viz. prim. proclam. Term. Pasch. 30 H. 8. And so them the matter it is sufficient to shew, that the Fine mas engrossed the same term in which it was leaved, so the Fine is pleaded to be lattic term Pasch. qui quidem sinis ingrossaus suit, & postea proclam. viz. prim: proclam. Termino Pasch. which was the same Cevit: it was leaved. levyed:

ieved: And so, admit, that in pleading it ought to be shewed that the fine was ingrossed in the same Term in which it was leved, &c. Now it appears here to us by necessary consequence, that the fine was ingrossed accordingly. And also the Ingrossment is pleaded as the Statute is penned, for the words of the Statute of 4H.7. are, after the engrossing of every fine, the same Fine to be openly read and proclaimed in the same Court, the same Term, and so the words of our plea here pursue the words of the Statute; for the said Statute both not require by express words, that the fine be engrossed the same Term, but the same is to be conceived by matter of construction and implication, and according to such manner of speech this plea is pleaded. And of the same opinion was Windham, and upon the same reason Anderson conceived, that the Tenant in pleading of the fine ought to shew in express words, that the fine was engrossed the same Term in which it was seved; for whosoever in pleading a plea will take the benefit of the Statute ought precisely to follow the Statute in all points; and it is clear, that if the fine be not engrossed, according to the Statute, that then it is not any bat by the Statute, and therefore it ought to be expressed alledged according to the Statute, and not by implication only.

Another Exception was taken to the Bar (as was remember by Windham) i pro ut per finem hic in Curia de recordo remanen plenius apparet; without laying, & per proclamation. inde, &c. But that Exception was disallowed by Periam and Windham, for the Fine had been good and well pleaded, without any luch conclusion, pro ut, &c. And also the proclamations are endoyfed upon the Fine, and then they appear upon the Fine, according to the words of the said conclusion. And so by Windham are many Presidents, and so in the said Case between Sowel and the Lord Zoich cited before, pro ut per finem illum hic de record, remanen, plane liquet. And See i Eliz. Plowden 224 between Willion and Barkly, a fine pleaded without any pro ut, &c. Anderson took an Exception to the Bar at the beginning of it, i. Quod medietas 60 Messuagiorum, &c. parcel, medietais 70 Messuag, prædiæ, that that is no good pleading; so one movety cannot be parcel of another movety, so every movety is entire.

Rhodes took Exception to the Replication, because the Demandant in anoshauce of the Fine, that at the time of the Fine lenvel Ramfield.

Rhodes took Exception to the Replication, because the Demandant in avoidance of the Fine, that at the time of the Fine leved Bamfield was seised, & some profes, & hucusque, &c. of the mopety in Demesin, and both not traverse the session of the Conusor at the time of the fine leved, for here two contrary pleas stand before us in equity of truth; seque vera, eque falsa, eque dubia, and a traverse would have made an end of all, and reduced the matter to certainty: And by Periam, the Bar is not answered, for every Bar ought to be traversed, consessed, or abothed, See 6 H. 7. 5, and 6. where it is said by Hussy and Fairsa, where matter in fint is alledned by way of Bar it ought to be traversed, if it be not so the milebeit of tryal, as in case of Basterdy, where a thing is alledned to be done beyond the sea; or to leave the matter in Law to the Court, without putting the same to the Judgment of the Laypevelle, &c. See also 3 H. 7. 12 Cabere it is bolden, that a thing material alledged in the Bar variety to be directly traversed, or consisted, or abothed in fact of in Law, or conclude the other party by matter of estoppel: And that two assirmatives cannot make a god issue, But the matter of the Fine ledged shall be holden for both, and the time after alledged in the Bar landing was seised, as not answered; for it shall be taken true until it shall be avoided and descript by matter in Law, sense the Fine ledged shall be avoided and descript by matter in Law, sense the Fine ledged in the Connection so the same tested, ergo, the Constonical was not selled; and the time true until it shall be avoided and descript by matter in Law, sense the Fine ledged in the Connection so the same tested, ergo, the Constonical was not selled; and it is a common learning that in every Replication there are not selled; as not to be answered by any to be certainty as to that: See the Case betweet Fulmerson and Sievard 2 Ma. 103, that a Bar dught not to be answered by argument:

nument: And as to the certainty which is requilite in a Replication. See the Cafe betwirt Wimbila and Talboies, Plow. Com. 4 E.6.42. where the Plaintiff thewed in his Replication his title as beir, but because be did not thew, how heir, for want of flich certainty in the Replication, the Plaintiff could never have Judgment, although the Juffices for the matter in Law then in question were clearly resolved for the Plaintiff; and here in this Aeplication the incertainty is luch, that the Court both not know to which to give credit, to the Plaintiff, of to the Def. and the bare matter of the Aeplication is not lufficient; For in aboldance of a fine, to lay, that a stranger to the Fine, at the time of the fine leved, was leiled, was never received, but that, partes Finis nihil habuerunt, that was the ordinary plea. Windham to the same intent; that which the Demandant hath alleuged in aboydance of the fine, is but matter of Argument and implication. And we ought in this Cafe first to be infured of the matter of fact; fcil. Whether Zouch of Bambeld were feiled, and the Court both not know to which to give credit, 39 H.6.49 in Debt by an Executor, the Defendant pleaded, that the Testator made the Plaintist and one A. his Executor, wich A. is living, and the Plaintist pleaded, that the said A. died within such a Ward before the Writ brought, &c. and adjudged no plea, without traverle, without that, he was dead, for here are 2 affirmatives, whereon a good iffue cannot rife, which fee 32 H.6.23. The Def. in a Aeplevin abows for a Aent service, the Plaint. pleads, out of his fee, the Abowant laith, within his fee, he ought to traverse, without that it is out of his fee, and for the content of the present of the content of the content of the present of the content of the cont befault of the traverse the pleading of both parties; as to the several allegations of the seilin in Bamfield and Zouch may be true, for they both might be Joynt tenants of the laid movety at the time of the fine lebyed, in which cale, as to the movety of the movety it is good enough. And yet when in pleading it is alledged, that A. was leiled, &c. If the other party plead, that A. had nothing but joyntly with B. he ought to take a Craverle, without that, that A was fole feifed, and yet fole feifin is not express alledged, but when the other party pleads, that A. was seised, it ought to be intended a sole seism. Which See i E.49. 37 H. 6. 31. And it was never a plea admittable against a fine, to say, that the Conusor had nothing at the time of the Fine levyed, which see 41 E. 3.
14. and also 38 E. 3. 13. 8 H. 6.27. In Trespals the Defendant pleaded the Fine of the Ancestor of the Plaintist, who said, at the time of the Fine levyed he himself was seised, without that that partes ad snem the fine levyed he himself was selled, without that that partes ad normaliquid habuseums, which see 46 E. 3. 14. and a fine ought to be avoided by not seism of the parties to the fine, and not by the seism of a stranger to the fine; and there is not any Book in the Law that alloweth such an averment of seism in a stranger to the fine, without answering to the seism of the parties to the fine, but 13 H.8. In Assic, the Tenant pleaded a fine upon sender of the Ancestog of the Plaintist, to which the Plaintist said, that before the fine, at the time of the fine, and afterwards continually, he himself was seised, and the same was held no plea against such a fine upon a Render, notwithstanding the privity of blood; contrary against a fine, which propes a nift precedent.

plea against such a fine upon a Kender, notwiths anding the privity of blood; contrary, against a fine, which proves a gift precedent.

Anderson to the same intent. The Replication so, want of Traverse is incurable, so, we as Judges do not know what to do, because that the truth of the matter in sax both not appear unto us, and so neither the matter in Law; so, every plea ought to be kaverled, or confessed, and avoided, otherwise nothing appears to us, and we cannot know whether the Comusor of Bambeld were seised at the time of the fine se-ved, so, otherwise the matter in Law cannot rise; and yet I well know, that although a traverse may be spared in respect of a matter in Law which should be choaked and put out of the Book by the traverse, of so, the mischief of the tryal as associated, where a thing is alledged to be done beyond sea. 19 E.46. In debt the Desendant pleaded, that the Plaintiff was born at Denwark, under the obedience of the king of Denmark,

the Plaintist by Replication said, that he himself was born at D. in England in the County of York, there he shall not take a traverse without that, that he was born at Denmark, for there such tryal connot be, but in such case the Desendant by way of Rejoynder shall say, that the Plaint, was born at Denmark, without that the was born at D. in the County of York: And it is true, a supposal of a Writ or Count may be answered to an Affirmative; but a matter alledged by expess words rannot.

Rhodes, admitting now that the War be naught, and the Keplication faulty, as it is, then I conceive, that if the point of the Acion be conceived by the Bar, the Court shall give Judgment upon the Bar, and shall not meddle with the Replication; but if it be not conceive, that a Repleader map be awarded upon a Demurrer in Lawiwhich see Plowd. Ma. in the Case betwirt Browning and Beston 138. In Crespals the Plaintis doubt suppose the Crespals in two places, solid in Bermestreet and in Southwark in the County of Surrey; as to the Crespals in Southwark the Describant doubt sussisie by special matter of a Lease, without answering any thing to the Crespals in Bermestreet. The Plaintist doubt reply, and makes his title by a Lease more ancient than the Lease to the Describant; upon which the Describant doth demurt in Law. Row the beset in the Bar appearing, the Court awarded a kepleader. And 9 H.6.25 in a Replevin the Describant adowed so damage selant. The Plaintist made title by Common. The Describant pleaded a kepleader. And 9 H.6.25 in a Replevin the Describant aboved so damage selant. The Plaintist and etitle by Common. The Describant pleaded a kelease of the Common by deed, which was not a perfect deed, not which the singers in the Bar to the Avowy by the title of Common, the Cast awarded, that the parties should replead, not in respect of the distinus plea upon which it was bennurred, but in respect of the describant, in which the impersent she to the Avowy by the title of Common, the Cast awarded, that the parties should replead, not in respect of the describant, the Court, the Periam sate, that nothing should be awarded in this Case but where an Issue upon a demucrer all the parties of the pleading, the Court, the Bar, &c. are referred to the Court, as well for the form as for the inatter. The Book which bath been vouched to the contrary out of 9 H.8. I have procured earch to be made so the contrary out of 9 H.8. I have procured earch to be made for the Repleader theore was permitted by the aftent of the partie

pranted, for then Caules thous never have an end: And as to the Cale betwirt Browning and Beston, the Repleader there was permitted by the assent of the parties, rather then awarded by the Rule of the Court.

Windham to the same intent, that no Repleader than be in this Cale, and he said, that in the time of the Love dyer the opinion of the Court was so: And as this case is, the plea in But being good, and the Demutter being upon the Replication, no Repleader than be, for a Repleader shall never be granted, where the pleatupon a Demutter is not good, but if the But be not good, and the Desmont both demute upon the Replication, there a depleader may be. And as to Browning and Beston. Sale he conceived, that the parties did plead de novo, but not replead where the first deser was, as if the deser he in the But in the said sale of Browning and Beston, the Plaintist pleaded all de novo, as a new sount, &c. and pet the first deser was in the But; and therefore he conceived, that there it was not a Repleader, but that the parties by assent did plead de novo.

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n k, Anderson was of opinion, that as this Cale is, no displement hall be, and pet he held the Repleader might be upon a Dennurver as well as upon an Islue joyned. For a Dennurver sopned is an Islue to be tryed by the Iudges, &c. and such was the opinion of Manwood thief Baron. And the Judgment in the Cale betweet browning and Belton is not that the patties

shall plead de novo, but that they shall replead. See there folio 138.2.and in that Case there might well be a Aepleader, for there the truth of the matter in fact is confessed in the pleading, but in the Case at Bar it is otherwise, for the pleading is so obscure, that we do not know the truth of the matter, and the right of the matter doth not appear unto us.

And by Periam, as to that which hath been laid, that upon the bemutrer upon the Aeplication, the feilin of Bamfield at the time of the fineis confessed. Hir, its not so, for no more shall be holden confessed by a demurter, but that which is duly and sufficiently pleaded, and because the seis sin of Bambeld is not sufficiently pleaded, therefore not confessed much proof of that learning, see the Case between Wimbish and Talboics; and the Case betwirt Hill and Graunge: 1 Mar. Plowd. 171. and see the Case betwirt Partridge and Croker; and so was opinion of the Loyd Anderson, who re-iped much upon the Case, where it is said, that in pleading a plea, all matters in fact well and materially alledged by a general Demucrer

are confessed to be true.

Rhodes. Now we are to fee, if by the Statute of 27 Eliz. cap. 5. This befer in the Replication may be faived, and I conceive, that this Statute both extend to all imperfections which happen by the Act; Apilpzifion, or negligence of the Clarks or Counfel; for the Clorent propounds his Caufe to the Clark and his Counfel to manage in the courfe of his fuit, and if the Clark or Counfel err therein, or in that which to them belongeth, the Clorent as to that hall be releved by the Statute; but if there he any defect in the matter. In as the matter will not forme in there be any defect in the matter, so as the matter will not serve, it is otherwise. As 5 H.7.1. In the Roll of a plea there were divers spaces (for the year and day) boid and blank, in another Term, the Judges could not amend them, but now by the said Statute they may. So colour in Affile wanting is belied by this Statute, so the usual averment, & hoc paratus est verificare, &c. lest out, the Court bath power to amend it, and so by him the Court by this Statute bath power to amend that defect in Trespass.

Periam to the contrary. And that this default of Traverse is not amendable by the last Statute, so it is enaged by the said Statute, that

Antes 43, 44.

mendable by the lato Statute, for it is enaced by the laid Statute, that upon a Demurrer the Audges shall give Judgment as the right of the cause and matter in Law shall requiresbut in our case, as the pleading now is, no right of the cause of matter in Law appeareth according to which we can judge, for we upon this pleading cannot tell whether the Conusor of Bamfield was seised at the time of the Fine ledyed, for upon the Demurrer upon the Aeplication the feisin of Bamfield is not confessed, because it is not well alledged: And if it had been well alledged, pet it had not been confessed, because that the Cenant who demurrs upon the Aeplication, bath in his Bar expess alledged, that the Conusor was seited: An Original Write of Debt against one as Executor in the debe lessen and desires could not be amended by 8 H. 6. but now by the Statute of 27 Eliz. it may. See 22 E. 4. 21, 22. So nominare for presentare in a Quare Impedit thall be now amended by this Statute; And in a Writ of Formedon, discendere for remanere thall be amended by the said Statute of 8 H.6. 44 E. 3. 13. vide. 11 H. 7. 1, 23. In Asile, upon whom the Plaintiss, where it thouse be upon whom the Defendant entred; And if the Aberment usual as above was misselet down, it was amendable, but if it were utterly lest out, not, but now in both Cases it is amendable, so, defendit vin & injuriam quando, &c. if it be lest out, it is amendable, for all these matters lye in the Conusance of the Clark, but in our Case, the right of the cause and matter both not appear unto us, so, so, if same was seised at the time of the Fine seven, then as the Demandant, and if the Conuson and not the Demandant, then the Law is with the Cenant, as his Counsel path argued, so as the right of the cause consists and depends upon the truth of the seisin, which matter both not appear unto us; and it we enter in course of amendanter both not appear unto appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; And it we enter in course of amendanter both not appear unto us; ment,

ment, we do not know if the Demandant would have traverfed, with out that that the Conusoz was feised, which shall not be a good Cra perfi, 02 abique hoc, quod partes ad finem aliquid habuerunt, &c. which although it be a good Craverle in Law, pet we do not know if the truth of the cause will serve to maintain such matter, and because without altering matter we cannot amend the Plea. Windham to the same purpose; for by the Statute of 27 Eliz. we ought to sudge in this case, as the right of the cause and matter in Law shall appear; but in this case neither the right of the cause not the matter in Law appeareth unto use according to which we can judge, for we know not to which of the parties to give credit, touching the feilin of the Conusor, or Bamfeild at the time of the fine levyed, for as to our judicial knowledge, both Pleas are to us equally dubious; and he agreed the Cales put before touching amendment of matters upon default of the Clark, soil de hosponic se super patriam, lest out, so colour in Assize, and Tespals wanting, so, & hoc paratus oft verificare, all which matters are amendable by the Statute of 27 Eliz. But he laid, that if in Trespals the Defendant both justify by a Lease to pears, without thewing the place where the Leafe is made, it is not amendable, for it is matter which leath in the notice of the party only, and not in our judicial knowledge: And as to the Cafe of 5 H.7.

1. of the places left, he conceived it is not amendable in another Cerm by this Statute, for that is material, and the filling of those spacesthe parties themselves that supply and not the Court, for the Court than never amend, where their amendment makes alteration of the fubflance of the pleading, of all the Clerkit, as 20 H. 6. 15. In Crespans, the Plaintist declared of a continued usine siem impetrations brevis, viz. 18. die Martii, where the Ceste of the Carit bas, 2 die Januarii, the Defendant pleaded to Issue, which was found for the Plaintist, and that Apilpillion of the Ceffe of date of the Whit could not be amenbed. And no amendment upon this Stat. of 27 Eliz. two things are to be confidered.

first, that the Judges, in such amendment, mede not with matter, not after the substance.

Secondly, that they do not amond but according to their judicial

Anderson, to the same intent, for as it both been fato before, the truth of the Cale both not appear unto us according to which we can judge, and I conceive that upon any amendment upon this Statute, we cannot take out one Koll and put in another, and as out take is we cannot amend this defect without taking out the whole Roll, and therefore in the Cafe of Leonard, which was late Custos brevium here, where in a Replevin he abowed for a Rent service, and upon especial deroicthe Case was, that Sir Heary Mey held of the sald Leonard by Featty, and the Kent mentioned in the Adowy, and was attainted of high Creation, and the iking seised and granted the Land to the Plaintist, upon whom Leonard abowed for the Rent service, and Androy companions were agreed, that the cent, notwiths anding the seisure and grant of the king remained distrainable of common right, but Leonard could not have return of the Cattel, because be had abowed for a Rent-service, a momit appeareth to us upon the Aerdice, that he had right to so much rent, but not to such a Sent, but a Rent-seck distrainable of common right, sa Gent in another degrees and we also agreed that the Adow-ty last not anuendable, sor then upon such amendment, we sught to take out a whole stoll, which was not untended by this Statute: And he conceived, that his exception to the Bar, quod ad medicatem, so Message &c. parcel medicates and he conceived the Adom not take out one Roll and put in another, and as out take is we cannot bis exception to the Bac, suod ad medierarem, 60. Mestus &c. parcel mestus &c. parcel medierarem, 60. Mestus &c. parcel M •4.112

72. 2.

another matter, if now the parties demurring in Law as to part of Co. 1 Inft. 7 1.b. the Land in Demand, and being at Mue upon the relidue, if the Court mall adjudge the matter in Law, before the Islue be tried, or not, 32 H.6. 5 & 6. In Trespals for taking of his Cattel, the Defendant as to parcel pleaded not guilty, and as to the remuant pleaded another Plea, upon which the parties oid demur, and there they proceeded to trial before the matter in Law determined, and found for the Plaintiff, and he had Judgment thereupon for the damages, but the coffs were suspended until, &c. And the Defendant brought his curit of Erroz. 48 E 3.15. In an Action of Walt, as to parcel the Defendant pleads, no Walt, and as to the rest pleaded matter in Law, upon which there was a demurer joyned. It was holden, that the Issue should not be tried until the matter in Law be determined: But it was faid by Fulthorpe in Trespass, if the Defendant to parcel plead the Enquest, and to other parcel matter in Law, in such case he should proceed to trial prensently, and damages should be tared of the whole, as well of that upon which there was a demucrer in Law, as of that of which the Islue was joyned, ad quod non suiresponsum. See also 11 H.4. 228. In Trespass, the Defendant pleaded to Assume that the response has the response to Assume that the response to the res pals. the Defendant pleaded to Issue fozpart, and foz the relidue did demur in Law, Process foz the trial issued befoze the matter in Law determined; And Periam conceived that the Court might proceed in such Case, the one way of the other: As to the matter in Law, whether the issue in tail upon this fine should have the Averment, he conceived, that he thould not have the faid Averment, for that it thould be very perisious to the Inheritances of the subjects. And he argued much upon the dignity of fines out of Bracton and Glanvil, whom he called Actores, non Authores Legis; a that fines at the common Lawwere of great authority until the Statute of West. 2. And afterwards by the Statute of 34 E. 3. of non claim, from whence they became to be of to little value in Law, that they were accounted no other than feofiments upon Record, to as thereby no affurance was of Inheritances but a general incertainty until the Statute of 4H.7. by which Statute they were reflozed to their ancient power and virtue: After which Statute many thits were beviled, to creep out of it: So as the Statute of 32 H.8. was made to take away all questions and ambiguities which were conceived upon the laid Statute of 4 H.7. And therefore we who are Judges ought to frame our Judgments for the maintaining of the authority of Fines, for lo the possellons and inheritances of the Subjects thall be preferbed, And that is the reason, that if a stranger ledy a Fine of my Land that is the reason, that if a stranger ledy a Fine of my Land in my name, that I have not any remedy but a Whit of Deceit against him who leves the Fine, so it a feme-covert levyeth a fine of her Land as a feme-sole, the same shall bind her after the coverture, if the Dusband do not enter upon the Conucee during the coverture and intertupt the possession gained by the Fine: And 17 E.3. and our Boks are very plentiful to this purpose that the Law both ærge admit of such allegations against such Fines: A fine was pleaded in Bar of Land in allegations against such fines: A fine was pleaded in Bar of Land in A.B. and C. be agoinst whom it was pleaded was not recrived to averagainst the supposal of the fine, that there was no such Town of Damlet as A. 46 E. 3.5. A woman Cenant in tail, had Issue a Daughter, who was inheritable to the tail, the Daughter took a Dusband, a they both living the Dother, and during her selisin, levied a fine of the Land entailed to a stranger, sur conssanded roit, come coo, &c. who rendred the Land to the Dusband and Wise in specificall, the Dusband died having Issue, the Wise another Dusband, had Issue, and died, the busband to entitle himself to the Land as Cenant by the curtesy, would in pleading have averred the fessin of the Norther at the time of the fine leved, and he could not, and yet he was a stranger to the fine, but he was privy to the essate, and his claim was by her who leved the fine, & E. 3. 46. Fizz, Averment 40. In a Wift of Entry, sur disserting, the fine of the Ance-

Ancestor of the Demandant was pleaded in Bar by the name of Withe Demandant in avoidance of it would have safe that the name of his father was R.to have avoided the fine but to that he was not received. father was k.to have abouted the finesone to the Cenant pleaded Ne and 3 E.3.32.6il. Averment, 42. In a Formedon, the Cenant pleaded Ne dona pas, The Demandant by Aeplication law, That a fine was levied of the lame Lands, between the father of the Demandant, and one T. by which fine the father of the Demandant did acknowledge to T.the Lands come ceo, &c. and the laid T. gave by the laid fine to the father of the Demandant the Land in tail. Cathere it is laid by Stone, that fince the gift is proved by as high a Accord, a man thall not over againg such matter in avoidance of the said Fine, &c. and yet the party agains whom it was was a tranger to the fine: And see 38E.3.7 Che Lord shall not be received against a fine sevied by his Cenant to aver the dying seised of his Cenant in his possage. And as to the Issue in tail, be con-

kifed of his Cenant in his homage. And as to the like in tail, he conceived, that the Averment doth not lie for him, for the Iskue in tail is as much prive, as the veir of a Cenant in Feetimple. And see 33 E. 3. scil. Estoppel 280. In a formedon, the Cenant voucheth, the Bemandant Counter-pleaded, that the Couchee nor any of his Ancestors bad any thing in the Land in demand after the lesin, &c. to which the Cenant fald, that to that the Demandant should not be received, for the Factor of the Bemandant after the sift levied a fine to the Ancestor of the Couchee of the last Land in demand, for comfans de droit come crossed, and the same was holden a godd har to the Counter plea.

And it was said by the Justices, Chat although the Statute of West, 20f Donis cooditionalibus, both not avoid the Fine as to the soze-closing of the Isla in tail of his Formedon, pet it remained his force as to the refittaining of the beir in tail to aver a thing against the Fine, as well as against the beir in Fee-simple; and in all Cales, where he against whom a fine is pleaded claims by him who levieth the Fine, he shall not passe the same Averment, but where he claims by a stranger to the Fine, there was the fame and the twell enough; see 33 H. 6. 18. If my father the same that, of in Fee, grant the Land by fine, and afterwards I make Citle to the same Land by the same Ancestor, and the fine is pleaded against me, I shall not be received to see that those who were parties to the fine had not any thing at the time of the fine sevied, but such a one an estranger whose estars, but it is a good blea for meso say, had alternated for meson for her mesons for her say where the same such say, had a see the same for the fine so mesons for her say where the same such say. to the fine had not any thing at the time of the fine levied, but light one an estranger whole estate, &c. but it is a god blea for meto say, that after the fine such a one was seited in fee, and oid enterest sis, &c. 2.2 E 3.17. before 33 E 3. Estoppel 280. And Dyer 16 Eiz. 334. The father is Tenant for life, the Remainder in fee to his from and heir, levieth a fine to a stranger, sur conusans de droit come cep, &c. with marranty, and takes back an estate by the same fine, in that case it was holden that the heir should not be received to aber continuance of the possition and seitin, either and snem, tempore snis, or post snem, in the Tenant so life, for it is a feosment upon secord, and makes a discontinuance of the semainder and seversion. The only Book in our Law to maintain the Averment is 12 E 4 15. by Brian, who although he was a reverend studge in his time, per he erred in this, that is Tenant in tall be biffered, and levieth a fine linto a stranger, sur sonusan destroit, come coo, &c. that the Issue in tail may well say, that partes as snew maintains, but Coke and Lie were clear of a courtary opinion and see in the same pear, solute by Fairfax and Liederon, that it Tenant in tail, insert the Remainder is over to a stranger, levieth a fine sonusan destroit, come coo, &c. he in the Esmainder may aver continuance of seilin against ceo, see he in the Cemainder map over consistance of leikn against that fine, for he is not party, nor helt to the party, see And the Statoff 4 H.7 goes frongly to extract such Aberment out of the mouth of the Muse in tall, for the words concerning the same point are, labing to every person or persons, not party, nor privy to the safefine, their exception to about the said fine, by that, that those which were parties to the said fine nor any of them had ought in the Land at the time of the

lato fine levied: And it is clear, that the Issue in tail is privy to his Ancestor whose heir to the tail he is, which see agreed, 19 H. 8.6.7. And he bourhed the case of one Scamford late adjudged. Land was given to the eldest Son in tail, the Aemainder to the Father in tail, the eldest Son levied a fine, sur conusans de droit come ceo, &c. and died without Issue in the life of his father, and afterwards the Father died; the second Son shall inherit; but if the eldest Son had survived the father, and afterwards died without Issue, the second Son should have been barred.

Periam to the same intent: It should be very dangerous to the In-beritances of the Subjects to admit of such Averments, and by such means fines which sould be of great force and effect sould be much weakned, and he put many Cales to the same purpose as were put befoze by Rhodes Justice, and he shewed how that Fines, and the power of them were much weakned by the Statute of non-claim, whereof followed (as the presace of the Statute of 4 H.7. observeth) the Aniversal trouble of the Kings Subjects, and therefore by the said Statute of the Fines for the good of the Statute of the Subjects and therefore by the said Statute of 4 H.7. Fines, for the good and lafety of the Subjects were reflored to their former Grandure and authority, which thouse be construed by us who are Judges, strongly and liberally for the quiet and establishment of present possessions, and for the barring and extinguishing of former rights, and so did the Judges our Predecess; which see in the Argument of the said Case between Stowel and the Lord Zouch: So see such Ifberal construction, 19 Eliz. Dyer 351. Where if Land be given to Dusband and Wife in special tail, and the Husband alone levieth a fine and vieth having Isiue, the Isiue is barred: And it hath lately been adjudged by the advice of all the Judges of England, upon the Statute of 1 Ma.viz. All fines levied, whereupon Proclamations thall not be dayly made by reason of Adjournment of any Cerm, thali be of as good force and frength to all intents and purpoles, as if fuch Term had been holden and kept from the beginning to the end thereof, and not adjourned, and the Proclamations shall be made in the following Term, which reason in construction of the said Statute, the Judges in the case of the Cooks of London, 20. Eliz. have observed, which see Plowden 538. For although Successors are not mentioned in the said Statute of 4 H.7. but only Deirs, pet the Judges did construe the said Statute to extend to them that they should be bounden as well as the Deirs, so it is in the like mischief, and the sato Statute was made for the publick good, and for the repose of the Inheritances of the Subjects of this Realm, and therefore the same ought to be largely extended in the meaning and sense of it, and for the benefit of the Possessor of the Lands, and to the destroying of tormer rights which were not claimed. It hath been said, that this fine is but a fine by conclusion, and not in verify; and therefore not within the Statute. But without question, fines by conclusion are within the Statute. And that is clear by the Saving, soil to all persons other than parties to the said fines, erc. And Periam was against the opinion in Stowells Case by Sanders 356. A Dissels make a Feosment in fee upon condition, the feosies is the same of A Dilletto, make a Feotiment in fee upon condition, the Feoffee levies a fine with Proclamation, five pears pals, the condition is broken, the Diffeillor re-entreth, and Periam conceived that in such Cale the Diffeillor is bounden, for by the Fine, and five years non-claim, the right of every stranger is barred, and when the Disletsor entreth for the condition broken, the fine is not annoyed, but rather consumed, and former rights shall not be revived. Windham to the same intent, and bouched the Books before remembred, and that the meaning of the Statute of 32 H8. made upon the Statute of 4 H7. was to bind the Issue in tail as strongly as the heir of Cenant in Fee-simple was bound at the common Law, and that Fines by conclusion are as fully within the purview of that Statute as Fines in verity, sor fines by conwithin the purview of that statute as fines in verity, for fines by conclusion are affirences; and as to the objection against our fine, that it

is not rite levatus because that partes ad finem nihil habuerunt, &c. the same is no reason, wherefore this fine thould not be rite levatus, for these words rite levatus, to the external form of a fine are to be taken as to a fine levico, coram Edmundo Anderson & socijs suis, where all the Justices ought to be named, and lo it feemed alfo to Periam and Anderson, Out cale had little refemblance to the Cafe where Cenant in tail make a Leafe according to the Statute of 32H.8. If he be not seised at the time of the demile, it is void, for the Stat. speaks seised in tail: but so are not penned the Statutes of 4H.7. & 32H.8. as 4H.7. a fine seven shall bind priviles, thrangers, &c. & 32H.8. fines seven of any Lands entailed to the Conusor of any of his Ancestors, and it is not a fine in respect of the possession which passeth by the Fine, but in respect of the

Concord and Agreement,
And Cenant in tail by these Statutes hath as great power to bind

the right of the entail, although he cannot meddle with the possession, as the Cenant in fee-simple at the common Law.

Anderson to the same intent, all the matter rests upon this point, if the Issue in tail be privy or not. for if he be privy, then clearly he is bounden. And as to that, the Issue in tail before the Statute of 32 H.8: hath been always accounted privy. See 29 H 8. Dyer 32. Cenant in taff of the King levieth a Fine, the fame thall bind his Iffue, for they are privy. And he argued much upon the Cales cited by the other Juffices before, and especially upon the laid Cale of Stowel and the Lord Zouch, how that the Mue in tail is there holden privy; and that the Statute of fines ought to be taken and conftrued to enfore the operation of fines against former rights, and for the establishment of the present possessions and estates. And by him olders rights and persons are excepted by the law Statute, but this right in gross of possession, nor the Islue in tail, whose Ancestor being out of possession levieth the fine is not excepted, therefore both of them comprehended in the Aratute. And in his argument he stood much upon it, how dangerous a matter it thould be, to receive fuch averments and allegations which go meetly in avoidance of Fines, to leebery fine might fall in the mouth of the Lap-Gens, which would be very inconvenient. And he concluded his Argument with this Cale. Tenant in tail bath biscontinue, and distributed his discontinues, and levieth a fine, the discontinues before the proclamations reentreth, the proclamations are made, Cenant in tail both resenter, and dieth seiled; against this fine his Islue shall not be remitted. See as to the aderment, 3H.627; 33H.6.18.41 E.3.20.8 H.4.8. 12 E.4.19. by Fairfax and Noedham, and fol. 15: by Brian and Schoel. And asterwards Judgment was given, that the Demandant hould be barred.

Intr. Pasch. 24 Eliz. Rot. 2112. In Communi Banco.

CIII. Gunerston and Hatchers Case:

1. Jarles Duke of Suffolk mas leilen of three parts of the Manor of D. and Poole was leised of the fourth part of the said Banoz, and afterwards the Duke granted out of the said three parts a Bent-charge of sive marks to Gunerston; and afterwards the said Duke of the said three parts did ensease these parts did ensease his said sourch part of the said Panaz to the said Hardier in Fee, and after which Poole conveyed his said sourch part of the said Panaz to the said Hardier in Fee, and after wards Hatcher being feifed, ut fupra, reciting the faid feveral purchases, especially the faid fourth part devised to Katherin Hatcher at Mill, and Gunerston distressed the Cattel of Katherin Hatcher for the arreatages of the said Aent, and in a Aeplevin abowed the distress: and by the opinion of the whole Court the Avowed was not maintainable, soo the fourth part of the said Manor, which was in the possession of Poole, was not charged with the Rent, and although all the Manoz be now in the possession of Harcher, per the Mannoz is not so consolidated not united by this unity of possession, but that the owner might well enough fingle out eandem quartam partem, and grant it, and the grantee thall bold the same discharged, as the said Poole beld it; and the beats of the lato Katherin chall not be distremed; and so Judgment was given against the Avowant.

> Mich. 29 & 30 Eliz. In Communi Banco. CIV.

Voucher. Poft. 291.

I was moved by Serjeant Walmeley, If a common Accovery be to pais at the Bar, and the Tenant is ready at the Bar and voucheth to warr. A for whom one is ready at the Bar to appear for the vouchee by his warrant of Attorny; It was holden, that this appearance is meetly boid, for in such case the vouchee ought to appear in person, because without summons; but where summons issueth, and the same is entred upon the woll, there may the vouchee at the Return appear in person, or by Attomy, at his Election. And that was the clear opinion of all the Justices, and also of the Prothonotaries.

Mich. 29 & 30 Eliz. In Communi Banco.

CV. Keys and Steds Cale.

Formedon. 2 Len. 9.

12 a Formedon by Keys against Sted, the Case was, that Sted and his Cliffe were Cenants for life, the Remainder over to a stranger in fee; and the Writ of Formedon mought against Sted only, who made beree; and the Weit of Formedon bought against Sted only, who made default after default, whereupon came his Wise and proper to be received to before her right; which was denied her by the Court, so, this necovery both not bind her, and it is to no purpose so, her to desend her right in that Raion which cannot here be impeached; Wisereupour in the Remainder came and properts be received, and the Court at first vouteed of the Receit, sommuch as if the Demandant shall have Rudgment to recover, he in the Remainder might falsify the Recovery, because his estate, upon which he properts to be received, both not depend upon the estate impleaded, soil a sole estate, whereas his Remainder both depend upon a joynt estate in the bushand and Wisse, not named in the Wist. But at the last, notwithstanding the said Execution, the Receit was granted. See 40 E. 2. 12. ception, the Accett was granted. See 40 E. 3. 12.

Militer of Recevery.

Mich. 29 & 30 Eliz. In Communi Banco.

CVI. Liveleys Cafe.

P32.0

Writ of Right. In a Wirit of Right against Thomas Liveley of the Mannot of D. & de duabus partibus Custodiæ Forrestæ de C. the Cenant Dio Demand the vieto and he had it, and return was made, and now the callit of Habere facias silim, mas briefed by the Court, and it was, Visus Manerii & duarum parsium Custodia, &c. And it was holden by the Court not to be a lufficient been, for the Forcest it self ought to be put in view, soil the whole forces, and not duar parter rantum, as where a Rent of Common is demanded. to, the Land out of which the Rent of Common is going ought to be put in bien, and there a Colpit of Habere facias visum de novo illued forth.

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View.

### Mich. 29 & 30 Eliz. In Communi Banco.

CVIL Germys Cafe.

Cermy brought Debt upon a Bond against A as Executor, and the Debt. Case was, That the Cestator of A. by his Citill did appoint ceretain Lands, and named which, should be sold by his Executors, and the moneys thereof arising distributed amongst his Daughters when they have accomplished their ages of one and twenty pears; the Lands are sold, if the moneys thereof being in the hands of the Ct. Lands are sold, if the moneys thereof being in the hands of the Ct. cutors until the full age of the Daughters shall be affects to papelle bebts of the Cestator? And by the clear opinion of the whole Court, Post. 224-the same shall not be assets, sor that this money is similed to a special wife. ule.

> CVIII. Mich. 29 & 30 Eliz. In Communi Banco:

In an Action of Deht upon an Obligation, the Defendant laith, that the Plaintiff shall not be answered, for he is out lawed, and shewed the Outlawry in certain, by the name of I.S. of D. in the County of, &cc. The Plaintiff shewed, that at the time of the sute begun against I.S. upon whom the Out-lawry was pronounced, the laid IS now Plaintiff, was dwelling at S. absque hoc, that he was dwelling at D. Videzi H.7.13.

And it was holden a group sensiteation to about the Out-lawin without And it was holden a good Replication, to about the Out-lawly without a Mit of Erroz, by Anderson. 10 E. 4. 12. For if he were not owelling at D. then he cannot be intended the same person: See 39 H. 6. i.

CIX. Mich. 29 & 30 Eliz. In Communi Bayco.

Twas agreed by the whole Court, and affirmed by the Prothono-taries, That if in Account the Defendant be adjudged to account, and be taken by a Capias ad computandum, and let to mainprize, pendent the Account before the Auditors, and both not keep his day before them, that now a Capias ad computandum de novo hall issue forth against him.

Mich. 29 & 30 Eliz. In the Common Pleas.

CX. Gloffe and Haymans Cafe.

Joan Glosse brought an Action of Crespass, vi & armis, against John Trespass, vi & armis, against John Trespass, vi & armis, against John Trespass, vi & armis, active to the pleatest the general Rule, and the Turp found this & armis, active to a Shop of Grocery, & quod illa repositi fiduciam in the Defendant, vant for carry-to sell the Grocery Chares of the Plaintiff in the said Shop: And ing awy his surther found, that the said Defendant being in the said Shop in form Masters goods. along each to the said surther form of Turpess and bid condet them, &c. It was moved in Arrest of Judgment, that this Action, vi & armis, upon this matter both not see have a formal action and the said Shop that the Sourt matter both not lie, but rather an Action upon the Cafe. But the Court was clear of opinion, that the Action both well lie, for when the Defendant was in the Shop aforelaw, the Goods and Mares did remain in the cultody and possession of the Plaintist her self. And the Defendant hath not any Interest, possession, or other thing in them, and therefore if he entermeddle with them in any other manner, than by uttering of

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them by fale, according to the authority to him committed, he is a Trespasso; for he hath not any authority to him committee, he is a Trespasso; for he hath not any authority to carry the Wares out of the Shop not sold, but all his authority is within the Shop. And Rodes put the Case of Lindeton 25. If I deliver my Sheep to another to manure his Land, or my Orentoplow his Land, and afterwards he kills them, I shall have an Action of Trespass against him: And afterwards the contexts of the contexts. terwards Judgment was given for the Plaintiff.

Mich. 29 & 30 Eliz.

CXI. Martin and Stedds Cafe.

Richard Martin, Alberman of London, hought an Action upon the Cafe against Stedd, and declared. That whereas the Queen by her Lettery Patents dated, the 27.0f August, anno 24 of her Aeign, had granted to the Plaintist the Dirice of Master of the Mint, through all England, to exercise the said Office, secundum formam quarundam Indent. her twirt the faid Queen and the faid Plaintist conficiendam, and that in January following the faid Indenture was made, by which it was agreed betwirt the faid Queen and the Plaintist, that the money, in posterum, betwirt the laid Queen and the Plaintiff, that the money, in posterum, should be made in such manner, &c. according to the true Standard, and declared that he had duly and lawfully made all the money according to the laid Standard: Pet the Desembant, machinans, &c. had samperously spoken and given out speeches in these words, Adr. Martin bath not made the money as good and sine as the Standard, by an instrument in the ounce, and so he hath saved sour thousand pounds. It was objected against this Declaration by Walmesley Serieant, that here the Plaintist bath declared upon the Letters Patents, and the Office given by the Letters Patents apply to be exercised according to the Indenture, &c. and here appears upon the Declaration no Indenture, so, no encolment of such Indenture is shewed, and if it be not encolied, then there cannot be any Indenture betwirt the Queen. &c. and then the Leteen cannot have an Anion upon it so want of encolment. See 21 H.7.21. 1 H.7.28 and 31.5 E.4.7 and also if there be not a sufficient Indenture, then the Plaintist is not Waster of the Office with allothere is not any new Indenture: And then the Plaintist ought to make the money according to the the old Standard, and then might the Desembant well justifie the words.

\*\*Minother Exception was taken, because the Plaintist is not at any

Another Exception was taken, because the Plaintiff is not at any damage, so, the Oneen cannot have against him but an Action of Covenant upon the said Indenture, because the Defendant hath not made the money accordingly, which matter is not accomable, no moze than if the Farmer of the Queen had brought this Action against one, for speaking that he had woken the condition of covenants of his Lease. And as unto these words, so that the Defendant bath laved four thousand pounds, these words are not actionable, for it may be he bath he bedithis four thousand pounds to the Queen; and such construction the Ausges aught to make of such ambiguous words in such cases, will

in optimam partem. It was adjorned.

o Selectin de la mara Mich. 29 & 30 Eliz. In the Common Pleas.

CXII. Mounton and Wests Cafe.

Challenge. 3 Len. 222.

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M air Action of Cresposs between Mounson and West, the parties I were at Illie, and now at the Return of the Pannel the Defendant challenges the Acray, because it was mude by Bartholome w Armin,

who took to Wife the Coun German of the Plaintiff, & ex ca had Thue living, the mother being dead: Andupon this challenge the Plaintiff oid demur in Law; And it seemed to the Lord Anderson, that it is not a principal challenge, but only to Favour. For the matter of the challenge is not consanguinity, but only affinity: And so it seemed to Periam. And Rhodes cited a cale adulaged in the Kings Bench. Markham brought an Action upon the Cale against Lee, who at the Nisi Prins challenged the Array, because the Cheriffs wife in a fifter to the Philameter. lenged the Array, because the Sherists wife was sister to the Plaintists (Mise, and that was before the Lord Dyer at Notingham, and that challenge was holden there, not to be a principal challenge supon which Croq was brought in the Kings Bench: And Erroz assigned in that, and for that cause the Judgment was reversed: And by Windham the Writ of Venire facias is, quia nulla affinirate,&c. so as affinity is presumed in Law not indistreent. And by Anderson that is to be intended of the Jurous, and not of the Sherist, 22 E. 4. 2. The Array was challenged, because that the Sherist, &c. had married A. Daughter of Eliz. Sister of the Apother of the Plaintist, and that was holden a principal challenge is it. 7.7.26 E.3.21. And afterwards at another Term the Casebeing moves, and echallenge; but Periam bestrayic, and mut a difference between also. pal challenge; but Periam hæstavit, and put a difference betwirt confan- 119. guinter and affinity, for affinity is not a principal challenge, unless it be aperted, that the Islue, &c. is inheritable to the Uand. And Anderson put the Case in 14 H.7.2. Where one challenged, because one of the Jurous had married the Mother of the Defendant, it was holden a principal challenge. And 15 H.7.9, where the challenge was for that the Hore of the Defendant had married the Daughter of the Shoriff. Sheriff.

Mich. 29 & 30 Eliz. In the Exchequer.

CXIII. Sir Thomas Greshams Cafe.

SIt Tho. Gresham being leifed of the Manors of Wallingham and Mil-Revocation of cham in the County of Norfolk, it Eliz. enfeoffed B. and C. to certain uses. uies, and that was with clause of Revocation upon the tender of forty shillings, and that after such Revocation he might limit new uses, and afterwards the year following, Sit The Gresham made the like conveyance of his Lands in the County of Sussolik to the safe persons, to the like uses, upon like clause of Revocation upon the tender of susty willings Air Thomastenders to the safe are sure super forty. but that the Revocation was utterly volv, for two several lums of sorty thislings ought to have been tenvered, for they were several Indentures and could not be satisfied by one sum. After which by a private at of Parliament, 23 Eliz, the sale Repocation was enaced and adjudged to be god and sufficient in Law. And now the Lady Greken was called by process into the Exchequer for a fine due to the Queen fine of allie for the sale alienation, because that now the sale uses newly raised were aniso good, and the sale Banor possessed atcording to the said Bratuce which recited the whole special matter, and that so want of a sufficient Cender, the Aevocation was bost in Law; and also reciting the new uses which were beclared so the varment of his bebts, and many honerable which were declared for the payment of his bebts, and many honorable Legacies, a allo for the lecurity of those who had purchased underneath the laid new uses. For vemeny whereof it was enacted, & quod pracial.

Revocationes bond & sufficientes in lege habeantur, reputentur, & recognoscautar. And

it was argued by Coke, that upon the matter, no fine is due, for all those new uses took their essence and essence by that Act of Partiament, to which the Queen her self is a party, and the principal Agent, and therefore against her own Act she shall not claim a fine, &c. And also the alienation without licence is a wrong and trespass; and an Act of Parliament cannot do wrong, and if partition he made betwirt Parceners by Act of Parliament, no fine is due to the Queen, which was in ure 23 Eliz. for by Parliament then a Partition was made her twirt the Co-heirs of the Lord Laximer, and I do not know that any fine bath been demanded sor it.

Mich. 29 & 30 Eliz. In the Common Pleas.

CXIV. Bret and Sheppards Case.

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Ret brought Debt upon a Bond against Sheppard, the Bond was endozed, upon condition, that where the Defendant was arrested at the sute of one A. If now the Defendant shall appear in the kings Bench, where the process is returnable, that then, &c. And the Defendant satu in fact, that he had appeared, secundum formam & escentum conditionis supradict. & hoc petit quod inquiratur per patriam, & pradict. Brett similiter: It was moved, that the parties should replead for this matter, upon which they are at Issue, sail. the appearance is not trivible by Jury, but by the secord: And the Court was clear of opinion, that the parties should replead for the cause associated. And it was moved by the Lord Anderson, that if A. be bound to appear in the kings Bench at such a day, and A at the said days goe to the Court, but there no process is returned, then the party may go to one of the chief Clerks of the Court, and pray him to take a Rote of his appearance: And by Nelson, we have an actent form of entry of such Appearance in such Cases, Ad hunc diem venit I. S. & proper indemnitatem suam & Manucaptorum suorum petit quod comparentia sua in Curia hic recordetur. And see for the same 28 H.6.17. And afterwards the Lord Anderson, inspecto Rotulo, ex assensi se se besore, and out in ure: The same Law is, where at the day of appearance no Court is holden, of the same Law is, where at the day of appearance no expear, out to have an Appearance recorded in such manner as it may be; and if the other party pleadeth Nultiel Record, it behoveth that the Defendant have the secord ready at his peris, so this Court cannot write so the Sussices of the kings Bench, so to certisse a secord bither.

Mich. 29 & 30 Eliz. In the Common Pleas.

CXV. Baxter and Bales Cafe.

Debt not extinct by adminifiration. Daxter brought Debt upon a Bond as Executor of L against Bale;
D who pleaded that the Plaintist after the death of the Testator was cited to appear before the Didinary or his Commissary to prove the Will of the said L and at the day of his appearance he made default upon which the Didinary committed Letters of Administration to the Desembant, by some of which he did administer, so the debt is extinct, so, but the whole Court was clear of opinion, that the debt was not extinct, so now by the probate of the Will the administration is defeated, and although the Executor made default at the day which he had by the Citation before the Didinary, yet thereby he is not absolutely debarred, but that he may resort to the proving of the Will whensoever he pleaseth; But if he had appeared and renounced the Executor was appeared and renounced the Executor.

cutorifip it had been otherwise; and the debt is not extina by the Administration in the mean time.

> CXVL Mich. 29 & 30 Eliz. In the Common Pleas.

12 a Franchise the parties are at Issue upon a matter triable out of the Franchife. And it was moved, if now the Record should be fent I the Franchile. And it was moved, it now the Record hould be lent into the Common Pleas, and there treed, and after trial lent back into the Franchile: Which Periam and Anderson utterly benied; and deperium, there is no reason that we should be their Administrate to try Moues sopned before them: And it is not like, where in a Liberty of France Len. 37. chiffe a Forrein Cloucher is to warrant Lands, in such cases we shall betermine the Warranty; but that is by a special Statute of Glocester cap. 12. And Nelson Prothonotary said, that such an Asset was tryed here of sate. Our open of fate. Quod nota,

Mich. 19 & 30 Eliz. At Serjeants Inne.

CXVII. The Barl of Arundel, and the Lord Dacres. Cafe.

Philip Carl of Arundel, and the Lord William Howard his Brothet mater the Daughters and Coheirs of the late Lord Dages! And now came Francis Lord Dages as beit male of the late Lord Dages! And now the Inheritance, &c. And after long lute betwirt both parties, they lubmitted themselves to the award of Gibber Lord Talkoe, and of Archur Lord Grey of Wilton, and Windham and Periam Justices, and before them at Serjeants Inne, the matter was well behated by the Council learned on both sides; and as unto Greistock Lands, parcel of the Lands in question, the Case was. That Canant in tail makes a Section of the Council learned on the Case was. at Serjeans Inne, the matter was well behated by the Council learned on both stoes, and as unto Greistock Lands, parcel of the Lands in question, the Case was. That Tenant in tail makes a feosment in the unto the use of himself so dis life, the Kemainder in tail to his expessed when with divers Remainders over, with a Provile, that is single of the Entailees do any act to intercupt the course of any entail limited by the same and go to him who is next inheritable; and afterwards Cenant in fail dieth, his chief som to inhom the use in tail was are limited entreth, and both an sa against the said Provile, and pet bely himself in and made Leales, the Leaces enter, the Lesley dieth sisses being within age, and in ward to the source, that beet is a stemitter, for by this sat against the Poddis, they are is a stemitter, for by this sat against the Poddis, they were, and so the posses of Council with the being general of the Lord Darres, that bere is a stemitter, for by this sat against the Poddis, the use, and so the posses in a stemitter, for by this sat against the Poddis, the use and the posses a stemitter, for by this sat against the Poddis, the use, and so the posses in a stemitter, for by this sat against the Poddis, the use and the posses in tail was limited by the Tenant in tail. Then when the Cenant in tail after his fail feosment holds himself in this is a discillin; for a Cenant y by sufference cannot be after the celler of an estate of Inhert. Hob 255, tance; but admit that he be but a Cenant at lusterance, yet when he distance, we the right of the rail believed to find afterwards by the Statute, yet the right of the rail believed to find afterwards by the Statute, yet the right of the rail believed from takes his stemainder by the Statute, and so he first to his eldes Son takes his stemainder by the Statute, and so he first of the close of the eldes of his father, he is reantised. Entaft befrends to bim, be is remitted.

Mich. 29 & 30 Eliz. In the Common Pleas.

CXVIII. Butler and Ayres Case.

Utler and his Wife brought a Wirit of Dower against Thomas Ayre, Bon and Deit of Bartholmew Ayre, first husband of the laid Margaret Calife of the Plaintist, and bemanded Dower of Lands in A and B; the Tenant pleaded, never seised que Dower, and the Jury found that the faid Bartholmew was feiled buring the Coverture, de omnibustenementis infra script. preterquam, the Tenements in (sic ut dicta Margareta dotari potuit) Erception was taken to this dervice; because that this preterquam, &c. both confound the dervice. To which it was said by the Court, that the preterquam is fole, and surplulage, for it is of another thing than that which is in demand, and the feilin of the first busband of Lands in A. and B. is confessed, and the (preterquam) works nothing: Another matter was objected, because here the Jury have assessed damages, as incase where the Husband vied seised, the which dying seised is not found by the Aerdict: In which Case it was said by the Court, the Demandant might pray Judgment of the Lands, and release damages; or the Demandant may aber that the busband died feifed, and have a court to enquire of the namages, quod omnes Pregnotarii concesserunt.

Dy. 370.

Mich. 29 & 30 Eliz. In the Common Pleas.

CXIX. Michel and Hydes Cafe.

Ower by Michel and his Wife against Lawrence Hyde, who appears ed upon the grand Cape; And it was because that the said Hyde in truth was but Leftee for years of the Land of which &c. in which case he might plead non-tenure, if now he might wage his Law of non-summons, so as the Witt be abated for by the wager of Law he hath taken upon him the Cenancy, and affirmed himfelf to be Cenant, 33 H.6.2. by Prisoit, to which it was late by Rhodes, and Windham Instices, that here the Cenant being but Leffee for years is not at any milchief, for if Judgment and Execution be had against him, he notwithstanding might afterwards enter upon the Demandant. Another matter was moved, That where the Whit of Dower was, de tertia parte Rectorize de Dand upon that the grand Cape tflued, Cape in manum nostram tertiam partem Rectoriz, and the Sheriff by colour of this Whit tok the Tythes levered from the nine parts, and carried them away with him: And it was agreed by the faid Justices, that the same is not such a feilure as is intended by the said Writ, but the Sherisf by virtue of such Writ ought generally to seize, but leave them there where he found them. And the Court was of opinion to commit the Sheriff to Prison for such his misoemeanor.

Mich. 29 & 30 Eliz. In the Common Pleas.

CXX. Hamington and Ryders Case.

Debt.
Savil Rep. 74. tol pears to John Hamington Dusband of liabel, and afterwards John Hamington Dusband of liabel, and foliable foould have the use and occupation of the said Land folial the pears of the said Land foliable for an as the should live and remain sole, and if the bied of married,

that then his Son flould have the refidue of the faid Term not expired; John Died, liabel entred, to whom the Caid Lawr. coveped by feofiment Deviles. the faid Land in fee, and in the Indenture of the faid Conveyance Lawr. covenanted that the fact Land from thence sould be clearly exonerateo, de omnibus prioribus barganijs, titulis, juribus & omnibus alijs oneribus quibuscunque, label took to busband, the Son entreth: If now the Covenant be broken was the question. It seemed to Anderson at the first motion, that this possibility which was in the Son at the time of the feofiment, was not any of the things mentioned in the Covenant, feil former bargain, title, right, or charge; But pet it was conceived by him that the word bargain did extend to it, for every Leafe for years is a contract, and although that the Land at the time of the Feofiment was not charged, pet it was not discharged of the former contract: And by Windham, if he bounden in a Statute staple, and afterwards I bargain and sell my Lands, and covenant (ur supra) here the Land is part charges but if after the condition contained in the Personne is not charged, but if after the condition contained in the defeasance be broken, so as the Conuse extends, now the Covenant is broken; And by him, the word (charge) doth extend to a possibility, and this possibility might be extinated by Livery as all agreed, but not translated by grant, 3 Lem. 43. of ertinguished by release, as it was lately adjudged in the Case of one Corena.

Carrer. At another day, it was argued by Walmelley, and he much relied upon the words (clearly eronerated) utterly discharged, of altogether eronerated, and without doubt it is a charge which may happen, and if it may happen, then the Land is not clare econerated: And also for mer bargains do extend to it; and the Term is not extinct by the acceptance of the feofiment aforelate of Kidwelly, and although, that at the time of the feofiment it was but a possibility, and no certain interest, pet now upon the marriage of label, it is become an actual burthen and charge upon the Land, and he cited a Cale adjudged, 8 Eliz. A man feiled of Lands grants a Rent-charge to begin at a day to come before which day he bargains and fells the Lands, and covenants that the faid Lands are discharged of all charges, in that case when the day when the Rent ought to begin is incurred, the Covenant is clearly broken, for the Lands were not clearly econerated, & At another day the Care was moved at the Bar. And Anderson openty in Court vectared, that he and all his companions were agreed, that the Land at the time of the feofiment was not discharged of all former Rights, Titles and charges; and therefore commanded, that Audgment mould be entred for the Plaintiff.

Hill. 30 Eliz. In the Kings Bench. CXXI. Howel and Trivanians Gafe.

Howel brought an Action upon the Case against Trivanian in the Assumption to the Defendant, who made the Defendant his crecutor, and vied, after which the Plaintist came to the Defendant, and spake with him concerning the said gods, upon which communication and speech the Defendant promised the Plaintist, that if the Plaintist could prove, that the said gods were delivered to the Cestator, and that he would pay the value of them to the Plaintist: And the Declaration was in consideration, that the said goods came to the hands of the Cestator, and also afterwards the gods came to the Defendants hands, and morn non Assumptive pleaded, It was sound sor the Plaintist, and Judgment given: And asterwards Error was vought in the kings Bench, and Error assigned, because that the Plaintist had not averted in his Declaration, that he had proved the delivery of the said gods to the said Cestator, sor the words. proved the delivery of the laid gods to the laid Cellator, for the words of the promite are, a probase potniffer: And also it was affigue.

Claytons Rep. 45. I Cro. 756. ed for Error, that here is not any confideration upon which this promife could receive any firength, for the Defendant bath not any profit or advantage thereby, soil by the bailment of the sato good to the Brother of the Defendant; and also it is a thing before executed, and not depending upon the promile, nor the promile upon it: As the Cale te-ported by the Lord Oyer 10 Eliz. 272. The Servant is accessed in Lon-don, and two men to whom the Master is well known, bail the said Servant, and after the Patter promifeth to them for their friend thip, to fave them harmless from all costs and bamages, and in an Action upon the Cale brought upon that promile, the Plaintiff was barred, for here is not any confideration, for they valled the Servant of their own head without the request of the Baster, and the matter which is alledged for confideration is executed before the Asumplic, and the promise has not before the enlargment, and the faid bailment was not at the instance, or request of the Baster. And the Case of one Hudson was cited, adjudged in the Kings Bench: The Defendant in consideration that he was Administrator, and natural Son of the Intestate, and that the gods of his father have come to his hands, promileth to pay the debt to the Plaintiff. And in an Action upon the Case upon that promile, the Defendant pleaded he made no luch promile, and it was found that no gods came to the hands of the Defendant, And it was bolden, that the confideration that he was Administrator and Son to the Ceffato, was not of any force to maintain the Action, and afterwards in the principal Case the Judgment was aftermed. And it was moved by Coke that Judgment thouse not be given against the Crecutor of his own goods if he had not goods of the Ceffator, for the charge doth not extend beyond the consideration, is. That the goods of the Ceffator, carry to the hands of the Islands of the Constant of the goods of the Ceffator. the Cestator came to the hands of the Desendant. But Wray Justice was of opinion, that Judgment shall be of his proper goods, as in Case of consession. Komp Secondary, if the Action be brought upon Animpsit of the Cestator, Judgment shall be of the goods of the Cestator, but of the promise of the Executor, of his own goods; but the Original Judgment which is now affirmed was general.

Hill. 30 Eliz. In the Kings Bench.

CXXII. Savel and Woods Cale.

1 Cro. 71. 3 Len. 203. Poft, 128.

We Cafe was; That a Parson ord Libel in the spiritual Court a gainst a Parishoner for Tythes of such Lands within his Parish, the Defendant came into the Kings Bench and surmised, and that he and all those whose estate he hath in the Lands out of which the Cythes are demanded, have used to payedery year side shistings to the Parish Clark of the same Parish for all the Cythes out of the same place: And it was argued by Coke, that that could not be, for a Parish Clark is not a person-corporate, nor hath succession: But if he had prescribed, that they had used to pay it to the Parish Clark to the use of the Parson, it had been good: Also be ought to shew, that the Parson ought of right to sind the Parish Clark, &c. And he cited the Case of Bushie the Parson of Pancras, who libelled in the Spiritual Court for Cithes, The Defendant to have a mobilition with parsons. Defendant to have a probibition did prescribe, that he, and all those, &c. had time out of mind, &c. used to pay to the clicar, &c. and at last a Consultation was awarded because it was triable in the Ecclesiasticonditation was awarded declare it was trinde in the extrematical Court. for both parties as well Alear as Parlon are spiritual persons, and the modus decimand is not in question, but cois solvend. And at another day, it was agreed by the Justices, that of common right, the Parlon is not tied to find the Parlin Clark, for then he should be said the Parlons Clark and not the Parlin Clark: But if the Parlon be tied to find such a Clark, and such a sum hath been used to pass to the Parish Clark in bischaege of the Parlon, the same had been a good prescription, and so by way of composition; and by Clench

Challenge.

Tythes are to be paid to spiritual Persons, but a Parish-Clark is a Lap-person: And afterwards the Court granted a Consultation.

Hill. 30 Eliz. In the Kings Bench.

CXXIII. Higham and Reynolds Cafe.

In an Action of Trespals the Plaintiff declared, that the Defendant 1 Maii 28 Eliz. cut down fir posts of the house of the Plaintist at D. whe Defendant both justifie, because that the free hold of the house to Aprilis 27 Eliz. was to I.S. and that he by his commandment the same pay and year did the Crespals, &c. upon which the Plaintiff did de mur in Law, because the Defendant did not traverse, without that that he was guilty before or after. And the opinion of Wray was, that the traverse taken was well enough, because the Free-hold shall be in tended to continue, &c. Vide 7.H. 7.3. But all the other three Justices were of a contrary opinion to Wray: But they all agreed, that where the Defendant doth justifie, by reason of his free holdat the day supposed in the Declaration, there the traverse (vefoze) is good enough: And afterwards Judgment was given against the Defendant.

Hill. 30 Eliz. In the Kings Bench.

CXXIV. Knight and Footmans Cafe.

In Crespass by Knight against Footman, the Case upon the pleading surrender of was, that one Margaret had issue two Sons, Richard and Thomas, and Copy-hold currendeed to the use of Richard for life, and afterwards to the use Land. of Thomas in fee; they both, Thomas being within age, surrender to the use of one Robert ap John in fee, who is admitted; Richard dieth, Co 1 Inst. 248. Thomas dieth, having issue A. who is also admitted, and enters into the Land, and if his entry be lawful, or that he be put to his plaint in the nature of a Dum suit infra exacem was the Question. And Wray was clear of opinion that it was: And if a man selsed of Copy-hold Land in the right of his calife, or Tenant in tail of a Copy-hold both surrender right of his Mife, or Cenant in tail of a Copy hold both surrender to the use of another in fee, the same both not make any discontinuance, but that the issue in tail and the Wise may respectively enters and 1 Cro. 372. So was it holden in the Serieants Case, when Audley, who afterwards 380. 391.483. was made Chancellor of England, was made Serieant; and afterwards 717. it was adjudged, that the entry of the Enfant was lawful. More 506.

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Mich. 29 Eliz. In the Exchequer.

CXXV. Sir Wollaston Dixies Case.

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t Ū H e D A II Information was in the Erchequer against Sir Wollasson Diss. Information upon the Statute of Usury, a upon not guilty pleaded. The Information upon the Statute gave in evidence an usurious Contract upon a bargain of Warest ture of 13. The opinion of the Court was, that the Information being exhibited Eliz. of Usury. for the loan of money, that the Evidence was not pursuing nor leading to the Issue. And yet the Jury against the opinion of the Court upon that evidence found the Defendant guilty. And it was moved in arrest of Judgment, that the Evidence of not maintain the Information, not prove the Issue, exparte Querentis, and it was said, there are three things within the Statute, it three words, it bargain, loan, and cheivisance, and these three are several things, i bargain, loan, and cheivizance, and thele three are feveral things,

and therefore, if the Information be conceived upon loan, and the Informer givith in Evidence a corrupt vargain for cloth, as it is in this Cale, the lame both not maintain the Information; So if the Information be granted upon uturious contract by way of mortgage, and giveth in Evidence an uturious loan, ut supra. But if the Information had been conceived generally upon an uturious agreement, and giveth in Evidence a loan, the same is good enough, so, every loan is an agreement.

bidence a loan, the same is good enough, so, every loan is an agreement.

Manwood, There cannot be any loan without bargain, not any sopbearing without bargain, so, he contracts ot bargains to bo it, viz. to send, of sobear: Bargain of sobearing is where the sirst day of payment is not kept and the parties have agreed so a surther day so payment, &c. And it appeareth in this Case, that it was a bargain to sopbear a sum of mony which should have been paid before; And the Insopmation here is upon a bargain by way of loan, where was a bargain so softened a bargain so, this wood (Bargain) in the Statute cannot be intended a bargain so wares of such things, and so distinct from the other two things, &c. If in Insopmation upon loan, an usurious contract had been given in Evidence, that would not maintain the Insopmation: And it was moved in this Case, if the time of the loan of sopbearance of the money shall be accounted according to eight a twenty bearance of the money shall be accounted according to eight a twenty days to every month, of by the months in the Kalender, viz. January, February, &c. And it feemed to some according to the days, as in case of the Statute of 23 Eliz. of Reculants; and others conceived contrary in both Cases. And Fuller said, That in the Case of policy of Assurance made to warrant a Ship, one was bound to warrant a Ship for twelve made to vactant a Soppose was bound to the time of the twelve months, the truth was, he did not perish within the time of the twelve months, being accounted according to eight and twenty days, but being accounted by the Italender, as January, Fed. Sc. it perished, Sc. and it was faid and holden, that he had not forfeited his Bond. Gen Baron. If I lend one a hundred pounds without any contract for Interest, and at terwards at the end of year he gives me twenty pounds for the loan thereof, the lame is within the Statute, for my acceptance makes the offence without any bargain or contract. And by Clarke Baron, the place where the Defendant accepted excellive Interest ought to be home in the Information, but not the place where the contract for the loan or forbearance was made, for the same is not needed. than so faibearance was made, for the same is not needful. See the Cale betwirt stradling and Morgan, Plowd. 200. for the setting down of the place in the Declaration, where the Extortion was committed: The Information bereis by way of corrupt bargain and loan. The Defendant took at Dertford such a sum, where the taking is layed, apud Dertford, but no place of the cogrupt bargain of ofthe loan. And by Gent. If Ilend to Beefic for a year, and afterwards he takes further for bearance of another year beyond the rate, the same is within the Statute: but in all Cales, the place where the corrupt bargain was made ought to be certainly alledged: Manwood Baron, the Information is not good for the incertainty of the place, where the corrupt bargain was made; and although there are many Prelidents on the Informes part, it is not to purpole, for they were admitted without exception, and then they patted sid sidentic, and so of no force. There are three things, or taker defrees of offences within the Statute. Inclury, within the Statute, there aught to be corrupt loan, cheivilance, or thirt, a corruption, a he ought to take more than eight pound for one hundred pounds, 3, it ought to be for lending of forhearing. There was a Case in this Court in the time of this Queen, that the Defendant had taken more than ten pounds in the hundred pounds, but in the Information no corruption in the bargain was alledged; and therefore Audgment was given against the Informer: But in the Case at Bar corruption is set forth in facto, and therefore as to that the Information is good enough: As unto the forbearing a giving of days of payment the lame is alledged in the Information.

mation, but not according to the Statute for the Statute is in the difjunctive, but the Information is in the copulative; here in our Cafe the is to that guilty, under which general is all the points of the Statute are included and ought to be tried; as unto the corruption the fame is not lufficiently laid, for no place is affigned where the corrupt bargain was made, ergo no vine for it to be tried, ergo, no trial can be, ergo, no iffue fogit, ergo, this point of the Statute both not come in iffue, nor can it be tried upon the general iffue, Dot guilty. Also he held, that all the Offence ought to be within the year, for if one make a corrupt bargain for this year, and ten years after he takes excellive ulury, the came is not within the Statute to inform upon it. And in truth there is no fuch offence without corrupt bargain, fo as he conceived, that the word (Lending) is a ftrange word, but where the Statute is forbearing or giving day of payment, t in the Information it is giving and forbearing in the copulative, that is good enough, for the one word enforceth the other, and is not double. Also the Inc. formation bath not the wed whole money it is, and therefore it is not good: And afterwards Judgment was given against the Informer and a Urit of Error thereupon brought in the Erchequer Chamber: And it was argued by Pophum Attorney General, that Ludgment ought to have been given for the Queen and the Informer, for the thewing of the place where the corrupt bargain was made needs not to be atledged in the Information, for the offence punishable by the Statute is the receipt of excessive usury, and not the contract: And it was the Case of one Bird, 20 Eliz. where the Plaintis showed the place of the Access, and not of the contract, and yet had Judgment for the Aucen, without any exception to it before Audgment, or Error after, for the contract is but inducement to the receipt, and it shall be tried where the taking was; therefore it is not necessary to shew the place of the bargain: And it was adjorned.

> Mich. 30 Eliz. In the Exchequer. CXXVI. Saliard and Everats Cafe.

Homas Saliard and Hen. Everat being Reculants convicted, and not having Reculants. paid twenty pounds for every month, a Commission issued forth to Owen. Rep. 37. enquire of their Goods and Lands in the County of Suffolk, to levy there on the Debt and penalty due to the Queen. And now the Commission being returned, the parties appeared, and by their Council thewed, that some of their Lands returned in the Commission are Copp hold, and praped as to thole, Manus Domina Regina amoveantur, and that upon the Statute of 29 Elizcap 5. concerning Reculants: viz. that upon default of payment of penalties, &c. which processiffued out of the Exchequet to take and feize all the goods, and two parts as well of all the Lands, Cenements and Pereditaments, Leales and Farms of luch Offender, as of all other the Lands, Tenements, and Pereditaments, liable to luch seilure, of to the penalties aforesaid, by the true meaning of this Act, leaving the third part, &c. And Popham Attorney General moved, If a Reculant hath moze than a third part of his Lands in Copp hold land, if this Copy hold as to the surplusage shall be liable to the penalty. Manwood chief Baron concessed, that the Copy hold is liable in this Case by the Statute, although not directly by express words, yet within the intent of it, and that by reason of these words all other the lands, &c. liable to luch feilure, &c. Walmel Serjeant, Copp. hold is not liable to a Statute Merchant og Staple; allo if the Queen hath the Copy hold, how thall the Lord have the fervices which the Queen cannot do? Ailo a Copy-hold is not an Pereditament with in this Statute, which extends only to Dereditaments at the common Law, and not by custom: Also in Aas of Parliaments which are enamed

for forfeiture of Lands, Teoements, and hereditaments, by those words they shall not forfeit Copy-holds. Clark Baron, this Statute was made to restrain Accusants from taking the benefit of their Lihings, and Copy-holds are their Livings as well as free-holds, and by this Statute, the Queen hall not have every effate in the Copy-hold Land, but only the taking of the profits; but the scope of the Statute was to impair the Livings of Reculants, and that by driving of them for want of maintenance to repair to the Church.

Walmesley, If the Statute had given to the Queen to feise two parts of their livings, then the Statute had extended to Copp-holds. Manwood, when a Statute is made to transfer an estate by name of Lands, Cenements, and Pereditaments, the Copy-hold is not within fuch Statute; but if the Lords Signiory, his Customs and Services, are not to be impeached, or taken away by such Statute, then it is otherwise; for such Statute both not make another Tenant to the Lord; And by him Copy holder shall pay Subsidies, and he shall be assessed according to the value of his Copy hold as well as of his freehold, and in this Cale, the Queen is to have the profits of the Lands only, but no effate. At another day, the case was argued for the Reculants by Snag Serjeant, and he faid, that these words Lands, Tenements, and Dereditaments are to be construed, which are such at the Common Law, not by Custom: If A give to one all my Lands, Tenements, and Pereditaments in D. my Copy holds do not pass, and Statutes which are made to take away Policitions and pereditaments out of persons ought to be strictly taken, and not by Equity: The Statute of 13 Eliz. of Bankrupts enacts, that the Commissioners may fell the Lands and Tenements of the Bankrupts; if the Statute had not made a further provision, the Commissioners could not fell Copy-hold Lands, but there are express words in the Statute for that purpole, i.e. as well copy as fee: Allo the Staute of 13 Eliz.cap.4. of Auditors and Acceivers of the Queen both not extend to Copy-holds: And it hould be a great prejudice to the Lords of fuch Copy-holds, that the Queen fould have the Land. Popham, the intention of the Law Comtimes causes a liberal construction of a Statute in the letter of it, somtimes a firial and precise exposition, and here it appeareth, that the intention of the Statute was, that the Queen should have all the goods of the offender, and two parts of the Lands, &c. Teales and Farms, and the Reculant but the third part of all his Lands only; And therefore the Reculant is not to have any other thing but only that which is allotted to him by the Statute, and that is the third part, which is all the mainte. nance which the Law allows him and then if Copy holds be not within this Statute, a Acculant who hath great possessions in Copy holds, and bath no Free-hold should be dispunishable, and bath his full maintenance, against the meaning of the Statute: And he said that many things are within the meaning of a Statute, which are not within the words, as Bonds, Obligations and Specialties made to Reculants, thall pals to the Queen by this Statute by force of the word, gods, according to the meaning of the Statute, and all personal things are within the Statute, &c. profits of the Lands, Advowsons, and the like; and the very scope of the Statute was to take away from Recufants all personal things whatsoever, and two parts of real things, as Leales, farms, Lands, Tenements, &c. with the intent that with the fuperfluty of their goods and possessions, the chould not maintain Lefuits, and Seminary Priests, people more dangerous than the Recufants: And by him, Lands in ancient demesne are liable to the penalties by the Statute; although not by express words; So if a Reculant hath Lands extended by him upon a Statute acknowledged unto him, that Interest is not properly a Lease, or farm, yet it is Land within this Statute liable, &c. And if I be Cenant by Elegic, or Sta-

What Statutes extend to Copy-holds.

Dy. 5. 6. Co. 3. Inft.109 Ycl. 60. 12 Co. 12.

tute, &c. of Lands in D. not having other Lands in the faid Town, and I grant all my Lands in D. my Interest ut supra, shall pass; contrary, If I have other Lands there: And I grant, that if I have Copyhold Lands in D. and none other, and I grant all my Lands in D. Copyhold Land shall not pass by such assurance; because that Copyhold cannot pass but by surrender; If I put out a Copyholder out of his Lands, the same is a Disseisn to the Love of whom the Copyhold is holden: And if I levy a Fine of such Lands and side years pass, not only the Love is bounden as to his free-hold and Inheritance, but also the Copyholder for his passession, for the intent of the Statute of AH-1, was to take away contradersies, & livibus snem imponere, and tute of 4 H.7. was to take away controverties, & litibus finem imponere, and 5 Cd. 124: contention may be as well for Copp bold as for Land at the common Law. One hath a Leale for years to begin at a day to come, he who hath the free-hold thereof is diffeifed, the Diffeifor levieth a fine, five years pals, he who hath the free-hold is bound by it, but not be who hath the Interest for years in future, as it bath been lately adjudged; But he said. That if that point were to be handled again, the Law would be taken to the contrary; but it is clear that a Leafe in possession that be bound by such Fine: And as unto any prejudice to the Lordic is clear, that notwithstanding that the Queen hat the Copy hold Land, yet the Lord that have the Rent during the possession of the Aucen, which is the most valuable part of the services of the Copy holder. The Statute of 1 E.6. of Chantries, doth extend to Copy holder. general words, Lands, Tenements, and bereditaments, for other-wife the Provide which excepts Copy holds were not necessary: And in our Statute, the words are Lands. Tenements, and hereditaments, which are forceable words, which proves that our exposition to extend it to Copp-holds is proper and agreeable to the Statute, and this in the first branch of it; for Copp-hold is some Land, Tenement, or bereditament; the clause in this branch of the Statute is, and also all other the Lands, Tenements, and Deceditaments liable to such seisure, &c. the same is to be meant of such Lands which are bound with clause of revocation, of which is spoken in the former part of this Statute. De who departs out of the Realm against the Statute of 5 R.2. chall forfeit his gwds, and thereby his debts also? The King grants omnia bona & catalla selonum, Debts of Felons shall pass; Ergo Copp holds also, by 2 Len. 36. the name of Lands, Tenements, &c. as well as debts by the name of Post. 201.202. the name of Lands, Tenements, &c. as well as debts by the name of gods. In our Cale, the meaning of the Statute was, that the Queen hould have two parts of the whole efface of the Acculant, be it Copphold, Ancient demelne, &c. If upon the Statute of Bankrupts, a Copphold efface be fold to the King, the King thall pay the Kent, but thall not do any of the lervices, and in so much the Lozd thall be prejudiced; patiatur etiam & hic, rather than Reculants thould not be punithed; and it is not a frangething in Law, that the Lozd of a Coppholder thould be prejudiced for the offence of his Cenant; as where a Coppholder is outlawed, the King thall have the profits of his Copphold Lands, and the Lozd hath not any remedy for his Kent:

Pasch. 30 Eliz. In the Kings Bench. CXXVII. Stebbs and Goodlacks Cafe.

Detwirt Stebbs & Goodlack, the Case was, the Parson of Lencome in the Fraud shall Defendant shewed, that the custome of the Town of Lencome is, that the payment of Parson shall have so his Cithes the tenth Land sowed with any manifest of coin, and he shall begin his reckoning always at the sirst Land which is next to the Church, &c. The Parson shewed that the Defendant, by fraud and covin sowed every tenth Land which belonged to the Parson, ut supra, very ill and with small quantity of coin, and bid not dunge of manure it as he did the other nine parts, by means where of,

of, whereas the other nine every of them yielded eight Cocks, the tenth peilded but three Cocks, and for this matter the Parlon libelled in the Spiritual Court and confessed the custome, but for abusing of the custom prayed to have his Cythes in kind; the Defendant prayed a prohibition, and the Parlon afterwards a consultation: And the opinion of Wray Justice was that the custom was against common reason, and so void, but if it be a good custom, then the Parlon shall have the Action upon the case.

Pasch. 30 Eliz. In the Kings Bench.

CXXVIII. Rumney and Eves Case.

Copy-holder.

Poph. 39.

Is Ejectione firms by Jane Rumney against Lucie Eve, it was holden, that if customary Land do descend to the pounger Son by custom, and he enters and leaseth it to another, who takes the profits, and after is ejected: That he shall have an Ejectione firms without any admittance of his lesso, or presentment that he is heir. For which the Desendant shewed, that there were thirty years incurred betwirt the death of the Father, and the making of the Lease, so that here is supina negligentia, which shall disable his person to make any demise, quod suiconcessum. In answer of which it was said, that the Lesso, and that after his sull age no Court had been holden for a long time, and that after his sull age no Court had been holden for a long time, and that at the first Court that was holden, which was of late, he prayed to be admitted, but the Steward resuled to admit him; and the same was bolden a godd ercuse of his negligence: And it was holden, that the Plaintist ought not to shew that the Lease is warranted by the custom, but that shall come of the other side; and so it had been lately adjudged, which Wray granted: And by him, if a Copy-holder surrender in extremis to the use of himself for life, &c. If he shall be well again, the surrender shall stand, for he hath reserved an estate to himself. It was surther holden in this Case, that is a Copy-holder dieth, his speir within age, he is not bound to come at any Court during his non-age to pray admittance, or to tender his fine: Also if the death of the Ancestor he not presented, nor proclamations made, he is not at any misches, although he be of sull age.

1 Cro. 469. 483. 717.728. Ante 16.

4 Len. 30. 31 8 Co. 100.

.37 .5

Pasch. 30 Eliz. In the Kings Bench.

CXXIX. Saint-John and Petits Cafe.

Twas covenanted betwirt Saint-John and Petit, that Saint-John Mould present Petit to the Church of A. and that afterwards Petit Hould lease the Parsonage to Saint-John, orto any other person named by him, and that the said Petit sould not be absent by eighty days, and that he should not resign; and Petit was bound to person these Covenants, & Petit is presented to the Benefice: Saint-John brought an Action upon the Obligation, pretending, that he could not enjoy his lease by reason of the absence of the said Parson, &c. And the Lease was made to the Cutate at the nomination of Soint-John. The Parson said, that the Obligation is void by the Statute of 14 Eliz.cap. 11. See the Statute, All Leases, &c. made by any Cutate shall be of no better soice, than if it had been made by the beneficed Parson himself. Tanseild by 13 Eliz. 20. When a Parson leaseth to his Turate, who leaseth over, The Statute doth not make the Lease void by any absence of the Parson, but of the Cutate by softy days. Quere. For that it seemeth, that by the Statute of 14 Eliz. the Curate cannot lease, &c.

Pasch.

Pasch. 30 Eliz. In the Kings Bench.

CXXX. Gates and Halliwels Case.

B Etwirt Gates and Halliwel the Cale was, one having two Sons, des 3 Len. 55: nts of his Lands until his youngest Son thould come to the age of two and twenty pears, and that then the said youngest Son should have the Land to him and the heirs of his body: It was holden clearly by the whole Court, that the eldest Son should have fee in the interim until the poungest Son came to the faid age.

Pasc. 30 Eliz. In the Kings Bench.

CXXXI. Prowse and Carys Case.

Prowfe brought an Action upon the Case against Cary for words to That the Plaintist of Subborn, procure, and bring in falle Witnesses in such a Court at Westminster, &c. The Defendant planet, Not guilty: And it was found, that he did procure and brought in false witnesses, but was acquitted of the suborning. It was objected, 1 Cr. 296. That the Action both not lie, for it may be, that the Defendant did not state whom that he would depose fassily: Thou art a forger of false Arthrings are not actionable, and so it was adjudged, for it may be understood of Letters of small importance; but that Exception was not allowed, so it shall be taken in malam pattern, and cannot be sooken of allower, for it shall be taken in malam partem, and cannot be spoken of any honest man.

CXXXII. Pasch. 30 Eliz. In the Kings Bench.

Was bounden in an Obligation to B. upon condition, that if A beliver to B. twenty Quarters of Coin the nine and twentieth of February next following, datum presentium, that then, &c. and the next February had but eight and twenty days: And it was holden, that A. is not bounden to deliver the Cozn, until luch a year as is Aeap-year, for then February hath nine and twenty days, and at luch nine and twentieth day he is to deliver the Cozn, and the Obligation was bolden good.

Pasch. 30 Eliz. In the Kings Bench!

CXXXII. Allen and Palmers Cafe.

The Cale was, a Copy-holder did furrender his Lands to the use of a franger for life, and afterwards to the use of the right beits of a franger in fee, to be doed, and the Cenant for life died, and the cight where his beir of a franger in fee, to be, and the Cenant for life died, and the right bein by beir, of Palmer the Copy-holder entred; and by Cook nothing remained purchase, in the Copy-holder upon the said surrender, but the fee is referved to 2 Roll. 416. his right beirs, for if he had not made any such second surrender, his beir speir should be in, not by descent but by purchase. And the common difference is, where a surrender is to the use of himself for life, and afterwards to another intail, the remainder to the right beirs of him who surrendeeth, there his beirs shall have it by descent contrary where who furrendzeth, there his peirs thall have it by descent; contrary whete the furrender hath not an effate for life or in tail limited to bim, for

there his beit shall enter as a purchasoz, as issuch use had been limittento the right beirs of a stranger. And by him, if a Copp-holder surrender to the use of his right beirs, the Land shall remain in the Lozd until the death of the Copp-holder, for then his beit is known, &c. See Over 99. The bushand made a Feostment to the use of his Wise so, life, and afterwards to the use of the right beirs of the body of the bushand and Wise begotten, they have issue, the Wisse dithe dieth, the issue cannot enter in the life of his Father, for then he is not his beit. See Over 7 Eliz. 237. The bushand is so le seised in fee, and levieth a fine of the Land to the use of himself and his Wise, and the Beirs of the bushand, and they render the Land to the Conuso so, the life of the bushand, and they render the Land to the Conuso so, the life of the bushand, the remainder to B. so, life, the remainder to the right Deirs of the Pushand: The dushand bieth, B. dieth: Row the Wise the fall have the Land so the life of the Wise, for the shall not lose her estate by that render; and this remainder to the right beirs of the pushand is boid, and the Land and estate in it is in him as a Reversion, and not as a Remainder. And a mancannot tail a Remainder to his right Deirs whilest he is living, unless it begin sirst in himself. See Br.32 H. 8. Gard. 93.

Pasch. 30 Eliz. In the Kings Bench.

CXXXIV. Pearle and Edwards Case.

Affumple. Confideration 1 Cro. 94. The Cale was, that the Defendant had lealed Lands to the Plaintiff rending Kent forcertain years, and after some years of the Cerm expired, the Lestor in consideration that the Resee had occupied the Land, and had paid his Kent, promised the Plaintiff to save him harmiels against all persons, for the occupation of the Land past, and also to come: And afterwards H. distrained the Cattle of the Plaintiff being upon the Lands, upon which he brought his Action. Golding, Pere is not a sufficient consideration, for the payment of the Kent is not any consideration, sor the Leste hat the occupation of the Land sor it, and bath the profits thereof; and also the consideration is past. Cook, The occupation, which is the consideration, continues, therefore it is a good Assumpsit, as 4 E 3.4 Gift in Frank-marriage after the exousists, and yet the marriage is past, but the blood continues, to here; and bett the payment of the Kent is executory every year; and if the Leste be laded sor his occupation, he will pay his Kent the better. Godfrey, Is a man marrieth my Daughter against my will, and afterwards in consideration of that marriage I promise him one hundred pounds, the same is no good consideration, which Clench Justice denied. And afterwards the Plaintist had Judgment to recover his damages.

2 Len. 111.

Pasch. 30 Eliz. In the Kings Bench.

CXXXV. Wakefords Case.

Extinguishment of Copyhold by Releafe. The Catlof Bodford Low of the Manozof Bloid the Free hold Interest of a Copy-holder of Inheritance unto another, so as it is now no part, but divided from the Manoz, and afterwards the Copy-holder both release to the purchasoz. It was holden by the Court, that by this selease the Copy-hold Interest is extinguished, and utterly gone; but if was holden, that if a Copy-holder be ousted, so as the Loyd of the Manoz is distilled, and the Copy-holder releaseth to the Disselloz nihil operatur.

### Pasch. 30 Eliz. In the Kings Bench.

## CXXXVI. Docton and Priests Case.

In Trespass for breaking of his Close, it was found by special beter of Cro. 95.

Dick, that two were Tenants in common of a house, and of a close autopyning to the house, and they being in the house make partition without deed of the house and the close, see 3 E.49.10. Partition without deed upon the Land is good enough: Vide 3 H.4.1. And it seems by 3 E 4 Partition made upon the Land amounts to a Livery: Vide 2 Eliz. Over 179. Partition by word out the County void, 19 H.6.25. Betwirt Tenants in common not god without deed; 47 E. 3.22 being upon the Land it is god without deed: Two Joynt-tenants make partition, so as to that matter the common Law is not altered by the Statute, but as to compel such persons to make partition. Wray Justice conceived, that the partition here being without deed was not good, although made upon the Lands: Vide 18 Eliz. Dyer 35. And at another day Wray said, that partition by Tenants in common without deed by 179. wheresoever it is made is good; but in this case it appears, that the parties who made the partition were in the house (for they were Te. 6 Co. 12. nants in common of the Agessuage and a close adjoyning to it) and made partition, that one should have the house, and the other the close, so as they were not upon the close, and if so the close then also so the soule and Judgment was given accordingly.

Pasch. 30 Eliz. In the Kings Benchi.

## CXXXVII. Cook and Songats Cafe.

In an Action upon the case by Cook against Songat, the Plaintist declared, Quod cum quædam Lis and controversie had been moved be witt the Plaintist Lord of the Panor, &c. and the Defendant claiming certain Lands parcel of the said Hanor, to hold it by copy; and whereas both parties submitted themselves to the Judgment and Arbitrament of 1. S. Counsellor at Law, concerning the said Land, and the title of the Defendant to it: The Defendant in consideration that the Plaintist promised to the Defendant, that if the said I.S. should adjudge the said Copy to be good and sufficient for the title of the Defendant, that then he would suffer the Defendant to enjoy the said Land accordingly without molessation: The Defendant reciprocally promised the Plaintist, that if the said I.S. should adjuge the said Copy not sufficient to maintain the title of the Defendant, that then he would beliver and surrender the possession of the said Land to the Plaintist without any sute: And shewebsurther, that I. S. had awarded the said Copy utterly insufficient, &c. yet the Defendant did continue the possession of the Land, &c. And by Godsrey, here is not any consideration: But by Gawdy, the same is a good and sufficient consideration, because it is to avoid variances and sutes: And Judgment was given so the Plaintist.

Pasc. 30 Eliz In the Kings Bench.

CXXXVIII. Pawlet and Lawrences Cafe.

Teorge Pawlet brought an Action of Telepals against one Lawrence, Tearlon of the Church of D. for the taking of certain Carts loaded with Corn, which he claimed as a portion of Tythes in the Right of his Wife; and supposed the Trespals to be done the seven and twentieth of August, 29 Eliz. 4 upon Not guilty it was given in evidence on the Defendants part, that the Plaintist delivered to him a Licence to be married, bearing date the eight and twentieth of August, 29 Eliz. and that he married the Plaintist and his said Wife the same day, so as the Trespals was before his title to the Tythes: And it was holden by the whole Tourt, that that matter did adate his Bill: But it was holden, that if the Trespals had been assigned to be committed one day after that, it had been good; but now it is apparent to the Tourt, that at the time of the Trespals assigned by himself, the Plaintist had not Title, and therefore the Action cannot be maintained upon that evidence, sor which cause the Plaintist was Non-suir.

Mich. 30 Eliz. In the Kings Bench.

CXXXIX. Sir John Braunches. Cafe.

Forfeiture.

Copy-holder.

In the Tale of Sir John Braunch, it was said by Cook, that if a Topyholder be dwelling in a Town long distant from the Manoz, a gemeral warning within the Manoz is not sufficient, but there ought to
be to the person notice of the day when the Tourt shall be holden, &c.
For his not coming in such case cannot be called a wisful resulate So
if a man be so weak and feeble that he cannot travel without danger,
so if he hath a great Office, &c. these are good causes of excuse: It was
also holden, that if a Topy-holder makes default at the Tourt, and
he there amerced, although that the amercement do not estreated, or
leved, yet it is a dispensation of the softeture. Gawdy Justice. It
the Copy-holder be impotent, the Lord may set a Fine upon him, and
if he will not pay the Fine, then it is reason that he shall forset his
Land. Egerton Bollicitor, Marning to the person of the Topy-holder
is not necessary, for then, if the Lord of a Manor hath one Topy-holder
of it dwelling in Cornwal, and another in York, &c. the Lord ought to
send his Baplist to give notice of the Court to them, which should
be very inconvenient, and by him continual default at the Court both
amount to a wilful resulal. And by the whole Court, general warning within the Parish is sufficient, for if the Tenant himself be not
sectent upon his Copy-hold, but elsewhere, his Farmer may send to
him notice of the Court: And it was surther given in evidence, that
Sit John Braunch had by his Letter of Attorney appointed the Son of
his Farmer his Attorney to be the services sor him due sor his said
Copy-hold: And it was holden that such a person so appointed, might
essent John, but not do the services sor him, sor none can be the
same but the Cenant himself.

1 Cro. 353.

## Mich. 30 Eliz. In the Kings Bench.

#### CXL. Wilkes and Persons Case.

Ohn Wilkes and Margery his Wife, and Thomas Persons brought Excl. Trespals. pass, Quare clausum fregit, herbam suam messuit, & freenum suum asportavit, ad camoum ipsius Johannis, Margeriæ, & Thomæ; Anderception was taken, that it was not the Pap of the Calife, not she was not bamnissed by st, but her Pusband: Wray Justice, the Declaration is good enough, tot also though it be not good for the Day, yet clausum fregit & herbam messuit, makes end. it good: And Judgment was given for the Plaintiffs.

## Mich. 30 Eliz. In the Common Pleas.

### CXLI. Atkinson and Rolfes Case.

O an action upon the cafe by Atkinfon against Rolfe, the Plaintiff De tlated, that the Defendant in confideration of the love which he wise unto A. his father, did promise that if the Plaintist would procure a distharge of a Debt of I.S. which his sato father owed to the sato I.S. that he would save the Plaintist barmless against the sato I.S. And declared surther, that he had discharged the father of the Defendant from the sato Debt, and is become bounden to the sato I.S. in an Obligation for the payment of the sato Debt, apon which Obligation the sato I.S. hath sued the Plaintist, and hath recovered, and had execution accordingly, and so hath not been saved harmless, &c. It was objected, that the Declaration was not god, because the Plaintist hath not shewed in his Declaration, that he had given notice to the Defendant of the sato Obligation, or of the suit brought against him; but that was not allowed, but the Declaration was holden to be good, not with another the exception. Shutleworth, if I be bound to make to you such an assurance as I.S. shall bevise, I am bound at my petil to procure notice; Notice but if I be bound to you to make such assurance as your Counses thall advise, there notice ought to be given units me. It was adjoined. tlated, that the Defendant in confideration of the love which he

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# Mich. 30 Eliz. In the Common Pleas.

# CXLII. Bear and Underwoods Cafe.

Is a Replevin it was agreed by the whole Court, that the Plaintiff cannot discontinue his fuit without the equity of the Court; for as Leonard, Custos brevium, said, the Entry is, Recordatur per cutian; And if Discontinuance the Plaintiff would discontinue without moving the Court, the Defen, of suit in dant may enter the continuance if he will. It was also holden, that where court an Diginal is discontinued, the Defendant shall not have costs, but if the Plaintiff be non-suit the Defendant shall have costs, by 32 H. 8. 13. But after a discontinuance in a Laitat, the Defendant shall have costs by the Statute of 8 Eliz cape a And in this case it was agreed, that the Plaintiff may be non-suit after a Demurrer, and so he was

## Pajeh. 30 Eliz, In the Kings Bench. CXLIII Jecom against Neal and Clave.

C Eorge Jeromand Avice his Wife brought an Action of Ctepals of Al Affault and I fault and wounding of the Wife, and the Action was faid in Midd. Battery. and brought against Neal and Cleave, who pleaded that Salisbas an antient City, o that within the same, there is this custom, that if any make an

Imprisonment not good.

Aftray and affault any Officer of the faid City of any other perion, it he upon whom fuch affault is made, complain uncuthe Spayor of the faid City, that the Payor for the time being may fend for him who made the Affray as a Justice of Peace, to make him to answer to it, and shewed further, that the said Jerom made an Afray within the said City; of which complaint being made to the Mayor, the fact agapor fent the Defenbants being Conflables to bying the faid Jerom to him, by virtue whereof, they went to the Poule of the Plaintiff, and agmine oto him the commandment of the laid Payor, and would have brought the Plaintiff to him, and the Wife of the Plaintiff did affault them, and they moliter put their hands upon the fato celife, which is the fame affault, battery, and wounding, &c. upon which it was bemurred in Law. Coke for the Plaintiff; This custom is not good of reasonable: See Magna charta 29. Nullus liber homo capiatur, vel imprilonetur, &c. nifi per legale judicium parium fuorum vel per legem terræ, therefoze shall not be taken og impossoned upon a bare dignestion, and see 24 E. 3. Br. Com. 3. where a Commission issued to take all which were suspected notogiously for Friences and Crespasses, although they are not endicted, and the fame was holden against the Law, and therefore it was revoked, and fee the Statute of 5 E. 4 9. 25 E. 4 13. 28 E. 4 13.28 E. 3. 3. 37 E. 3. 18. & 42 E. 3. 3. 2. To be a Juftice of Peace both not lye in Prescription. For one Juftice of Peace was before the Statute of I E. 3. and then the Commencement being known, preferip. tion cannot be of it. 3. Admit, that the Mayor was Juffice of Peace, pet he cannot determin any thing out of the effions. 4 The Prefeription is, that the Dayoz might fend for him, and both not fay within the City, and it thall be an unreasonable Prescription to say, that the Mayor might send for him in such Case, in any place within England. 5. It is not spewed that they of Salisbury have a corporation, so as they might be enabled to prescribe. 6. The wounding is not answered, for moliter inficere manus cannot be taken for a wounding; it may well answer the battery, &cc. Fleetwood Aecorder of London, if the Statute of Magna Charta should be observed, no felon is duly handled at Newgate, and here we have not pleaded by way of Prescription, but of usage; consistend and usage are all one. And afterwards Judgment was given for the Plaintists, for the Plea in Bar was holden to be naught, because the wounding is not answered; and the Custom is too general, and also for the 4th exception.

1 Cro. 268.

Pafeh. 30 Eliz. In the Kings Bench. CXLIV. Sir Julius Cæfars Cafe.

Lectwood came to the Bar and shewed, that Julius Cxfar Judge of the Admiralty had libelled against an Officer of the Mayor of Lond. Simon Nicholas, for measuring of Coals at Wiggins Key, in the Parish of St. Dunsan in the Cast, and it was upon the Thames, and prayed a prohibition, because such under the Statute of 28 H. 8. 15. gave Jurisdiction to the Admiralty in Case of robbery and murder: And that prohibition was grounded upon the Statutes of 13.8. 15 R. 2. 2 H. 4. 17. And it was said, that this measuring whereof, &c. was in the body of the County; And note, that the laid Julius Cxsar, being Judge of the Admiralty had put in this Bill, ex officio judicis, upon which it was said by Wray Justice, that it was hard that he should be both Plaint. and Judge, and that his Jurisdiction should be tryed before himself, and afterwards, it was moved by Egerton Solicitor, who said he had spoken with the Lord Admiral, who told him that the Adapt of Lond, used to take a fine for measurage, and had made an office of it, and that he conceived, the same is ertortion, and being made upon the water, he conceived he is punishable in this Court, sor by the same reason the Mayard might take a Fine sor the measuring of Corn, Clothes, &c. Wray and

Gawdy Juffices; It it be extortion in the Mapor, there is no remedy for it in the Court of Admiralty: But in the Kings Court. Gawdy; It that be rediested here in a Quo warranto.

> Pasch. 30 Eliz. In the Kings Bench. CXLV. The Town of Suffex.

The Coun of Green in Suffex was amerced for the eleape of a Felon, Amercement and the faid Amercement was grounded upon an inquifition taken before the Coroner, by whom the eleape was found; and it was noded for the Cown, that here is not any luch eleape found, for which the Eleape. Town ought to be amerced, for it is found, that he who eleaped, to die Januarij, 30 Eliz. circa horam quartam post meridiem, with a Ditchtork mertalip struck one A. which A. of the laid stroak died at eight in the Evening of the same day, and that then the other escaped, for which escape being made in the Right, the Cown by the Law ought to be americed, for it is not felony, until the party bicth, which see 11 H. 4 and Coles Cale, Pach. 23 Eiz. 401. And therefore the Cown not any other was chargeable with the offendor before that the party was beap. Way: It thould be hard, that the Cown hould be amerced upon this matter, for although the Cown in discretion might have flaped the difference velore the death of the paety, yet it is not bound to to dot and the Court took time to advice of the Case.

> Pasch. 30 Eliz. In the Kings Bench. CXLVI. Jerom and Knights Cale.

Joan Jerom brought an Action upon the Case in the nature of Conspiracy. Conspiracy. that the last Knight had mall-conspiracy. that the last Knight had mall-conspiracy. The could cause the Plaintiff to be endited of Felony, and to be arrained to be arrained. upon it, and that the was legitimo modo acquietat. &c. And the Cale was, that the Defendant came into the Court where the Sessions was holden, and complained of the Plaintist for the said Felony, for which the Justices there comanded her to cause an Indiament to be drawn, &c. Coke upon the Books of 27 H. 6. 12. 35 H. 6. 14. 27 H. 8. 2. Fiz. 115. It appeareth, that if one come which he said in the Court and discovery Coke upon the Books of 27 H. 6. 12. 35 H. 6. 14. 27 H. 8. 2. Fiez. 115. It appeareth, that if one come voluntarily into the Court and discover felonies, and if it be true which he saith, of if he come in Fourt and draw an Indiament hy the command of the Justices, of if he ke bound by order of Law, to cause the party to be Indiated, of to give the Evidence, although he do it sallely, pet he shall not be punished for the same in Combinary, of in an Acion upon the sale; But if he come gravishth malice in him beddy, and malice are the ground of it, ac it is otherwise. Sawdy Inside, you shall it be tried, if he doth it with malice of not? Coke, It may be enquired of, for malice makes the distrance detwirt Ducder and Hanhaughter; and in such case it is to be enquired; and here he came to be the same without Hosces of coherism in Law.

But if he will salely do such office, his directs of coherism in Law.

But if he will salely do such office, his directs of coherism in Law.

But if he both subject such a one, and then upon examination he shall be bound to come and give in Evidence against the party, &c. and in such case although that his Eudanne be sale, yet he is not punishable; at another day, it was said by Coke in the same case, it spounds be give sale sales and the choice he feldered, and discount is a fetony, and gives Edibence, in a malice process against the party, it is not punishable; and here for thought makes is alterned, and put in the Declaration, to inhich the December of Westminster, and but in the Declaration, to inhich the December of Westminster, and but in the Declaration, to inhich the December of Westminster, and but in the Declaration, to inhich the December of Westminster, and but in the Declaration of westminster, and but in the Declaration of westminster, and but in the Declaration of westminster, and but the party is a alterned.

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Upon an Acquital of Grace, no Confpiracy

2. Cap. 12. Si inveniatur per inquisitionem quod aliquis sit abettator per malitiam, i&c. Wray Juttice; It should be hard to charge one with this Action, tohere he bath his gods stolen from him, and therefore causeth an Indiament to be drawn against one who he suspens of it, who shall be found guilty, who should be punished for it; for many Balefacors notwithsanding that the Evidence against them be full and pregnant, in favour of lite are acquitted, whereas by Law they ought to be hanged; and it is not reason, that upon such an acquittal of grace and mercy, he should have this Action; if such person had used any words of malice before the Bessians, an Action upon the case would have sain: And afterwards Judgment was given for the Plaintiff, Trin. 27 Eliz. 750. Ratsord, and afterwards a Writ of Errorwas brought, Trin. 29 Eliz Rot. 669. In the Original Action the Calrit and Declaration were that the Defendant, malicose invendes querentem in nomine, vira, sana, & bonis defraudare quandam Billam Indictament scribi seci., & eam exhibit to the grand Enquest, & ibidem false depositions in accontentaesse vera, which by Coke is sull matter of conspiracy; sor the drawing of an Indiament is not the office of a witness, but if it were by the commandment of the Court, or of one Justice of Beace, it should be otherwise, for there he goes by course of justice, 21 E 3. 17. If one conspire with another, and afterwards be procured further to be one of the Indiators, his oath shall not excuse his malice before. Gawdy, Acthe party had taken upon him to proceed against the party upon any god presumtions, he might have pleaded it, as to say, he found the party in the boule suspiciously, &c. but because he both not plead any such matter, but generally not guilty, and the Electric, there is no reason but that the Judgment should be affirmed; And afterwards, the Judgment was affirmed, and the words in a Brit of conspiracy, and the Declaration are all one as the words in a Brit of conspiracy, and the Declaration are all one as the word

Pasch. 30 Eliz. In the Kings Bench.

CXLVII. Ferrers Cafe.

Prescription.

Humphry Ferrers brought an Action upon the case, and declared, that he is seised of an ancient messinge in the Count of Tamworth, and that he and all his Ancestors, whose heir he is, owners of the Apelluage, &c. have used time out of mind, &c. to even pervells, in apera planea of Tamworth juxta Messiagium prædict. every Aparket day, to make Penns there for Sheep, and that he, &c. have used so such penning of Sheep, there to take divers sums of mony of sich persons who would Penn their Sheep there; and such the declared, that the Desendant had broken and pulsed down his Pervels, per quod proficuum sum inde amisis. And upon this Declaration, Godsrey did demur in Law, 1. The Plaintist hath not shewed in his Declaration, specially where he hath used to even his derdels, but generally in apera place, without shewing in his own Land, or in the Land of another; if in the Land of another, it is no good title, so, although that those who sish in the Sea may prescribe to set Stakes on the Land adjoining to the Sea, to hang their steps to dry after they have done sishing, and that is through the whole County of Kent 8 E. 4. so, their prescription is so, the common Wealth, but the same is not so here, but only so, a pridate gain; also no prescription is good, but where some profit comes to him who prescribes so, it, which see in the case of the Abbot of Buckfast, 21 E. 4. 4.21 H. 7. 20. Also the Declaration is, that the Plaintist bath taken diversa denariorum summas, and see the Prior of Dunsables case,

11 H. 6. 19. 19 R. 2. Action furle Cafe 51. But the certainty of the fums bo not appear in this Declaration, fo as the realonablenels of the cuftom might be known: alfo it appeareth here upon the Declaration, that Crespass, vi & armis, should lie and be brought, so the Declaration is, that the Decembant did break and pull down the Perdels which caunot be without express sorce, as 42 E 3.24. Crespass upon the case against a Miller, and declared that the Plaintiss used to grind at the said Mill without Coll, and that he sent his corn to the said Mill to be ground, and there the Defendant came and took two Bufhels of his faid coin; And the Witt was upon the prescription to grind fine multura, and that the Defendant, prædict querent fine multura modire impedivit, and by Award of the Court the Plaintiff took nothing by his Writ, for he bath declared that the Defendant hath taken Coll, and therefore he ought to have a general Arit of Trespals. Beaumont, to the contra-ry; A Parket is as well for the common Aealth as a Fishing; Also he is at the costs for providing of verdels, and the ereating of them, so (as he hath declared) he hath taken divers sums of mony for it; and as to any fum not certain, it is well enough, for peradventure fometimes he both taken a penny, cometimes two pence, as the parties could a gree: And as to the exception of vi & armis, the same is not material, to the Plaintiff both not rely upon the pulling down of the pervels only, but upon the loss of the mony also, which he hould have had if the Defendant had not broken his perdels: And afterwards Judge ment was given for the Plaintiff.

Pasch. 30 Eliz. In the Kings Bench.

CXLVIII. Beverly and Bawdes Cafe.

Beverly brought a wift of Error to reverse an Out-lawry pronounced against him at the suit of one Bawdes, and shewed, that he was out-lawed by the name John Beverly of Humby in the County of Lincoln Gent. And that within the faid County there are two Humbyes, feil. Magna Humby, & Parva Humby, and none without addition; To which it was faid, by, & Parva Humby, and none without addition; To which it was faid, of the other fide, that the truth is that there are two such Towns, and that Humby Magna is known as well by the name of Humby only, as taken for the name of Humby Magna: And upon that they are at Islue: And it was moved, if the Inquest to try this Islue shall come decorpore Tryal by iscomitatus, or from Humby Magna. And by Cooke, it shall be tryed by an Insquest of what quest of Humby Magna; and he consessed, that if the Islue had been, the County or such Town; then the Inquest ought to be of the body of the County, but here is another Islue to be tryed, 22 E. 4.4. In Trespass done in Fulborn and Hinton in the County of C. The Defendant said, that there is no such Cown nor sometime of Hinton within the same County. Jungoment of the Wist. See there by Briggs the tryal shall be, de corpore come ment of the Wit. See there by Briggs the tryal shall be, de corpore comicatus. See 14 H.6.8. Over-dale and Nether-dale, and none without addition, and so at Islue tryed by them of the body of the County, 35 H.6. 12. And by him, wheresoever an Islue may be tryed by an Inquest out of a special clisse, there it shall never be tryed by the body of the County. As the case before, 22 E. 4. Trespass in two County A and B. The Def. as the A nleady there may no such a son, and as to B. nleady of these last on the county. as to A. pleads, there was no luch Cown, and as to B. pleaded another plea. Now the whole Inquest shall come out of B. for the Inquest in one Town may try any thing within the same County, which see Firz Visco, 27. 22 E 4.4. And here in our case the Islue is, if Humby Magna be as well known by the name of Humby only, as by the name of Humby Magna. And therefore the same may well be tryed by Inquest out of the Count of Humby Magna. But by Wray Justice, this listue both amount to no such Count, for the perclose of the plea is, and no Humby with out addition; and the book cited out of 22 E. 4 is not ruled, but

is only the opinion of Brian. And afterwards it was awarded, that the tryal was well. Another matter was objected, because it is not hemed in the Arit of Erroz betwirt what parties the first Alcit did depend, for otherwise how can the Plaintist in the Alrit of Erroz have a Sche facias ad audiendum Errores, if none be named in the Arit of Erroz against whom it shall issue. And Godfrey affirmed, that upon search of Predicting it was both ways, so as it is at the pleasure of the Plaintist to do it or not. And Kemp Secondary shewed divers Presidents to that purpose: And after war as the Dut-lawry was reversed.

Pasch. 30 Eliz. In the Common Pleas.

CXLIX. Cibel and Hills Cafe.

A Leafe was made of a certain boule and Land rending Rent, and

another film, Nomine poenz; and for the Nomine poenz the Tellor wought an Action of Debt: The Leffer pleaded, that the Leffer had

entted into parcel of the Land Demiled, upon which they were at Iffue, and found for the Plaintiff: and now the Leftor brought Debt for the

Nebt for & Nomine pene.

Roll. Tit. Ex-

Rent referved upon the same Lease: to which the Defendant pleaded, unfopra, sil. an Entry into parcel of the Land demised: And issue was repned upon it; And one of the Jury was challenged, and withdrawn, because he was one of the former Jury: And the Issue now was, whether the last Cibel the Aesso, expulit & amovit & adhuc extra tener, the satue there the last Cibel the Aesso, expulit & amovit & adhuc extra tener, the satue Hills. And to prove the same, it was given in Editoence on the Defendants part, that upon the Aand demised there was a Brick-kill, and and thereupon a little small cottage, and that the Lessoz entred, and went to the satu cottage and took some of the Bricks and untiled the satue cottage: But of the other side it was said, that the Lessoz had referred to himself the Bricks and Tiles aforesaid, which in truth were there ready made at the time of the Rease made, and that he did not will be Brick-kill house, but that it fell by tempets, and so the Plaintiff bid nothing but came upon the Land to carry awayhis own goods: And also he had used the said Bricks and Tiles upon the reparation

Hob. 326. Rolls ubi fupra.

Poft 171.

Suspension of Rent by entry

upon part of the Land.

And also be had used the said Bricks and Ciles upon the reparation of the house. And as to the Extra tenet, which is parcel of the inue, the Level bid not continue upon the Land, but went off it, and relinquided the possession: But as to this sail point, it seemed to the Court, that it is not material if the Plaintiff continued his possession there or not, so, if he once both any thing which amounts to an Entry, although that he depart presently, pet the possession is in him sufficient to his pend the Kent, and he shall be said, extra tancre the Defendant the Lestice, until he hath bone an Ac which both amount to a Recentry. And afterwards to prove a Ke-entry, it was given in Evidence on the Plaintiffs part, that the Defendant put in his Cattel in the Field where the Brick-hill was, and that the Cattel did estray into the place where the Defendant had supposed that the Plaintiff had entred. And by Anderson Justice, the same is not any Ke-entry to revive the Kent, because they were not put into the same place by the Lessee himself, but went there of their own accord. And such also was the spinion of Justice Periam.

CL. Pajch. 30 Eliz. In the Common Pleas.

Tenant in tail covenanted with his Son to Kand leffed to the use of himself to life, and afterwards to the use of his Son in tail, the Memainder to the right beirs of the Father: The Father leaves a fine with proclamation and vied. It was moved by France, if any elitte

effate passed to the Son by the Covenant, for it is not a discontinuance, and so nothing passed but during his life, and all the estates which are to begin after his death are void. Anderson, The estate passeth until. &c. and he cited the case of one Pices, where it was adjudged, that if Tenant in tail of an Advocation in groups grant the same in fee, and an Ancestor collateral releaseth with warranty and bieth: Chat the same is a good Bar for ever.

Pasch. 30 Eliz. In the Common Pleas.

CLI. Staffords Cafe.

The case was, that the Parlon of the Church of B. did livel in the Attachment up. Ecclesiastical Court for Tithe-milk of eight kine depasturing on a Probabilition such a field within his Parish: The Defendant said, that he divided have had used time out of mind, &c. to pay every year a certain sum of mony to the Parson,&c. for the Cithes of the same Field; which plea the Judges of the Ecclesiastical Court would not allow, and therefore the party had now appointation and an Injunction against the Judges, Doctors, Proctors, &c. And afterwards the same Parish in both livels there was no difference, but that in the later livel it was for a less number of kine, and now the Parishioner upon this matter prayed an Attachment upon the Prohibition, which was granted unto him by the Court, for otherwise a Prohibition should be granted to no purpose.

Pasch. 30 Eliz. In the Common Pleas.

CLIL Samford and Wards Cafe.

C'Amford brought a Ravishment of Ward against Ward, and counted Ravishmen bat one a. Ancestog of the Infant, whole bett he is, was seised of cer- of ward.

Lands in fee, and held the same of the Bishop of Winchester in

Socage, and died, his Peir within the age of 14 years; and that the

custody of the Infant did belong unto him as his prochein Amy; hy force

of which he seised him and was possessed. The Defendant saith, that the Land was holden of him by knights fervice, about hoc, that it is holden of the Bishop of Winchester as the Plaints hath counted. And upon that Islue was joyned. And it was moved by Serjant Puckering on the Plaints part, that the truth of the Case was, that all the Land descended is holden in Socage, and no part in knights service, but that part of it is holden of another in Socage: And played the opinion of the Court, if that matter shall trench to the Islue as the same is joyned: And the Court was of opinion, that it did not: for is all be holden in Socare, it is not waterial is not of the holden of another holden in Socage, it is not material if part of it be holden of another, to as it be holden in Socage.

Pasch. 30 Eliz. In the Common Pleas.

CLIII. Stamp and Hutchins Cafe.

The Case was, the Obligor makes his Executors and dieth; the i Cro 1200 I Executors become bounden to the Obligee for the payment of the said Debt, and the Obligee both deliver back the Obligation of the Cestator to them; and afterwards another Creditor of the Cestator sues the Executors, who pleaded, that they have fully administred, upon which they are at tisue, and the said especial matter

Affett.

matter was found by berdit. And by Shuttleworth and Walmefley, The Bury have found for the Plaintiff, and that the Defendants have not fully administred: And petthey agreed the case of 20 H.7.2. The Ex ecutors paying to the Creditors of the Cestator a Debt with their own goods, they may retain to much of the goods of the Cestators but that case is not like to this, for here the Executors have not made any payment or satisfaction of the Debt, nor disbursed any month, see nor other things, but only have made an Obligation, to pay a fum of mony at a day to come, before which day it may happen that the Obligation be cancelled or released; but it may more fitly be compared to the case of 27 H. 8.6. where an Executor had compounded with a Creditor of the Cessator for the payment of 201. for a debt of 401. and had an Acquittance testifying thepayment of the 401 where it was holden, that the other 201 is affects. And by Rhodes, this making of an Obligation by Administration. Executors, (although the Obligation, in which the Testator was botter ben, be belivered to the Erecutors and cancelled) is not any adminifration nog payment of the fait bebt due: So if the Executogs pledice the goods for the payment of fuch a bebt, yet they hall be accounted af-Retainer by ad- other Juffices held clearly, that if in such case the Executors make a ministrations. Sufficient Obligation to the Creditor of the Testator, and sufficiently discharge the Cestator without fraud or covin, that they may retain the goods of the Cestator forso much: anothe goods retained shall not be faid Miets: And this case is all one with the case of 20 H.7. for here they have discharged the Cestator, and the Executors do remain charged with the same to the Creditor, and it is so fully administred, as it the Executors had express paid the debt. And it is not like to the case of 27 H. 8. cited before for there although they have discharged the Cestatoz, pet they have not charged themselves, otherwise it is in the principal case; and although they have appointed ulteriorem diem, for the payment of the said debt, pet the same is not material: But the Lord Anderson conceived, that if the Creditor both deliver unto the Executors the Obligation as an account ance of discharge, and in consideration thereof they promise to pay the debt, the same is not any administration as to the said debt. And by some of the Seriants, If the plea sand good to prove fully administred, then Executors in such case may make an Obligation to pay the debt 40 years after, and so defraud the other Creditors, which is not reasonable: If a Feofiment in Fee made upon condition to pay certain mony at such a day, and at the day the Feofices make an Obligation to the Feofice for the payment of it, the same is no performance of the condition. And by Periam, If the Executor be taken in Execution for the best of the Testator, he may retain so much of the goods of the Ceffator amounting to the fum for which he is in Execution, and it shall be accounted Allets in his hands. Anderson, If he to whom the Eccarorwas endebted in 201. be endebted to the Executors in fo much, and the Executor in latisfaction of the debt of the Tel. tatol telegieth his debt, the property hall be altered prefently of the whole good in the hands of the Executors: to where the Debtor makes the Creditor his Executor. And Judgment was given for the Executors,

Pasch. 30 Eliz. In the Common Pleas

CLIV. Boars Cafe.

Formedon.

Formedon in the Dikender was brought by Samuel Bear, James Bear, and John Bear of Lands in Savel-kind; and the Warranty of their an-Thor was pleased against them in Bar,upon which they were at Thue,

If Affets by discent. And it was found by special verdict, that Thomas, Father of the Demandants, was feifed in fee of the Lands Supposed to be bescended to the Demandants, being of the nature of Savel-kind, and bevised the same to the Demandants, being his toets, by the custom, and to their heirs equally to be divided amongst them: And if devise of the Demandants shall be accounted to be in of the Lands by descent, Lands in of bevise, was the question; by if by devise, then they shall not he As Gavel-kindsets. Anderson, Let us consider the bevise by it self without the words Own. 65. (equally to be divided amongst them.) And A conceive, that they shall defend by the devise, for they are now Toynt-tenants, and the survivor More 594. shall have the whole, whereas if the Lands shall be holden in Lam to 558. have descended, they should be Parceners, and so as it were Cenants in Sty. 434. common. And although the words subsequent, equally amongst them 3 Cro. 330. to be divided, makes them Cenants in common, petchat both not a 443.695. mend the matter; and so also was the opinion of Windham and Rhodes Justices. to be descended to the Demandants being of the nature of Gavel-kind. Juftices.

### Pasch. 30 Eliz. In the Kings Bench.

#### CLV. Nash and Edwards Case.

In an ejectione firms by Nash against Edwards, it was sound by special 1 cro. 100. Dervict, that one Dower Ancestor of the Plaintist, whose veit to is, veing selsed of certain Lands bolden in Socage, devised the same by word to his three Sisters; And a stranger being present recited to the Devisor the said words of his Califi, and he did assemblem: And as 3 Len. 79. terwards the said stranger put the said hours in writing for dis own remembrance, but did not read them to the Devisor, who assert which sheed and it was moved, If this devise being reduced with modes & forma, be good or not. Spurling concessed that not, so the Devisor intends a Califf in writing, but not such writing as is bett without devised intends a Califf in writing, but not such writing as is bett without devised intends a Califf in writing, but not such writing as is bett without devised intends a Califf in writing, but not such writing as is bett without devised intends a Califf in writing, but not such writing as is bett without devised intends a Califf in writing, but not such writing as is bett without devised intends a Califf in writing. The transmited ment of the Devisor, but here it doth not appear that the meaning of the Devisor, but here it doth not appear that the meaning of the Devisor, as the case in the Chamcery was, that Sic Richard Pexhal devised certain Lands to his Califfe, and the Sectioner inserted of his own head a condition, sci. (that she should be epast), the condition, although it was put in writing, was boid. And by the whole Caurt the devise is boid. And by Wray, if he appoint A to write his 2 Len. 35.

Dill, and it is written by B, it is boid, but if after he had written the Califf if he had read it othe Devisor, and he had consirmed it, it has been a good will, which Gawdy granters. And afterwards Judgment was given, that the Plaintist should recover.

Trin. 30 Eliz. Bot. 771. In the Kings Bench.

## Stone and Withypolls Cafe:

STone brought an Action upon the Case against Dorothy Withypol the 1 Cro. 126.

Secutify of W.Withypol her Dusband, Declared that where hersaid Owen. 94.

Pusband for certain pards of Alelbet of the value of fourteen pounds, 9 Co. 94.

& pro diversis alijs mercinsonis, masenmebten the Plaintist in the sum of ninety two pounds, and made the Desembant his Greentiff of there that after his death he came to the Defendant, and demanded of the the laid best, who gave to him such answer, forbear me until Michelms, and then I will pap it you, or put pour insufficient fecurity for the

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Affumplit.

true payment thereof: and veclared further, that at Michaelmas afoge. faid, the Defendant did not pay, not bath found any lecurity, and thewed a request, to which the Defendant faid that the laid Cestator at the time of the law Contracts for the Cleivets and other Wares, was within age: And upon that Bar the Plaintiff old demur in Law. Egerton Solicitor, for the Plaintiff. As I conceive these Contracts made by the Plaintiff are not meerly voto, fo that if an Action of Debt, og upon the Cafe, had been brought against the Cestator himself, he could not have pleaded upon the matter Nihil debet, of Non Assumption, of Non estactum, but he ought to avoid the matter by special pleading, and therefore here it is a good consideration; and I conceive that if the Testatoz at his full age had assumed to pay the debt, that that promise would have bound him, 9 Eliz. it was the Cafe of the Lord Grey, his father was endebted to biverte Berchants upon limple Contracts, and vied leiled of diverle Lands which descended to his Son and Deir in fee, the Creditors demanded their debts of the Deir, who answered unto them, if my father were endebted unto you, I will payit, and upon that promife an Action was adjudged maintainable, although the Peir by the Law was not chargeable; and also here the Defendant is to have ease, and shall avoid trouble of Suits, for perhaps if she had not made such promise, the Plaintist would have sued her presently, which should be a great trouble unto her, and therefore it is a good consideration. Cooke contrary, Mo consideration can be good, if not, that it touch either the charge of the Plaintist, or the benefit of the Defendant, and none of them is in our case, for the Plaintist is not at any charge, so which the Defendant can have any benefit, so it is but the sozbearance of the payment of the bebt, which she was not compellable to pay, and as to the suit of the Chancery, the same cannot make any good consideration, sor there is not any matter in the Case which gives cause of suit in Chancery, sor they will not order a matter there which is directly against a sule and Darim of the common Law. As if a Feme Covert be bound, &c. and the Obligee bring her into the Chancery, and if a man threaten me, that if I will not pay to him ten pounds, he will sue me in Chancery, upon which I promise to pay it him, no Action will see And an Insant is not chargeable upon any conupon that promite an Action was adjudged maintainable, although the him, no Action will tye: And an Infant is not chargeable upon any contrag, but for his meat, dink, and necessary Apparel, 192.4.2 And in Debrupon such necessary Contract, the Plaintist ought to declare specially, so as the whole certainty may appear upon which the Court may judge, if the expente were necessary and convenient of not, and upon the reasonableness of the price, for otherwise, if the necessity of the thing, and reasonableness of the pice both not appear, the Chancelloz himself would not give any remedy, or recompence to the party. Wray Justice concessed, that the Action would not spe, softhe contract was both, and the Insant in an Action against him upon it may plead Nihil deber: And if an Infant fell goods for money and doth not deliver them, but the Uendee takes them, he is a Trespallor, but if the Infant had been bounden in an Obligation with a furety, and afterwards at his full age he in consideration thereof promiseth to keep his surety harmless, upon that promise an Action speth, for the Infant cannot plead non est suctum, which see Mich. 28, &29 Eliz. in the Case of one Edmunds: And afterwards it was adjudged against the Plaintiff.

Trin. 30 Eliz. Ret 833. In the Kings Bench.

CLVII. Charnock and Worsleys Case.

Owen. 21. # Cr. 129. CHarnock and his Wife brought a Writ of Erroz against Worsley; the Case was that the Pushand and Wife, the Wife being within age leved a fine, and the Wife upon inspection was adjudged within

ace a it was moved, if the fine thould be utterly reverted, or as to the Wife only, & hould frand against the Dusband; & by Godfrey the Book of 50 E.3.6. was bouched where it is faid by Candilh, that where fuch a fine is reverted, the Plaintiff thall not have execution till after the peath of the Dusband; and by Coke and Arkinson, a fine acknowledged by the Dusband and Mife, is not like to a feofiment made by them, for in case of feofiment something passeth from the Ousband, but in case of a fine all passeth out of the Wise, and the Conuse is in by her only: And Atkinson thewed a Precedent in 2 H.4 where the fine was teberied for the whole, and also another Precedent, P.b.H.8.Rot. 26. 2 fine lebyed betwirt Richard Elie Plaintiff, and N. Ford. and Jane his Caife Deforceants, the Wife being within age, and Judgment was given quod finis prædict. adnuketur, & pro nullo penitus habeatur, and that the busband and Wife thould be reflozed, and thereupon a Wirit iffued to the Cuftos Brevium, to bring into Court the fot of the fine, and it was prefently cancelled in Court. Wray, this is a firong Precedent, and we will not barle from it, if other Precedents are not contrary. Gawdy (who was the same day made Justice) the fine cannot be reversed as to one, and fand as to the other, and relembled it to the Case of Littleton 150: where Land is given to busband and Wife in tail before coverture, and the Dusband aliens, and takes back an effate to him and his Wife for their lives, they both are remitted, for the Mife cannot be remitted if the busband be not remitted: And a Precedent was cited to the contrary, Eliz. where the Cale was that the busband and clife levyed a fine, the busband died, the Wife being within age the Wife took another Dusband, and they brought a West of Erroz, and the Wife by inspection adjudged within age, and the fine was reversed as to the fine reversed collife and her heirs. And it was argued by Golding, that here the collift as to one, to of Erroz ought to abate, for the collific to general, whereas it ought gainst and to be special, Ex querela A.B. nobis humillime supplicantisaccepimus,&c. See the ther. Book of Entries 278. Also the purclose of the Wittis, ad damnum ipsorum, the busband and the Wife, whereas the Wife only hath loss by it; and as to the fine it felf, he conceived that it fould be reverled but as to the Wife; as if a man of full age, and a man within age, levy a fine, in a Wirit of Erroz brought, the fine thall be reverled, as to the Infant only, and thall stand against the other; and becited the Case of the Lozd Mountjoy, 14 Eliz. Where a man feifed in the right of his Wife acknowledged a Statute, and afterwards he and his Wife levyed a Fine, and he said that during the life of the Husband, the Connice of the Fine should hold the Land charged with the Statute: Also in the Precedent of 2 H. 4 the Judgment is, that proper hunc & also errores, the Fine should be reversed, and I conceive that another extra was in the lato Writ, for which the Fine might be reverled in all, viz. the Fine was levyed of two parts of the Manoz of D. without faying in tres par- 3 Co. 58, 59. tes dividend. And fee that where two parts are bemanded in a Writ, the Modern Rep. Writ thall fay to, Brief 244 Coke contrary, and as to the last matter I 182. confess the Law is so in a Wit, but not in a fine, for the same is but a Conveyance, for if I be seised of a Manor, and I grant to you two parts of the said Manor, it is clear, it shall be intended in three parts to be divided. And as to the principal matter, I conceive, when the fine is seved by the Husband and Wife, it shall be intended that the Land whereof, &c. is the Inheritance of the Wife, if the contrary be not thewed, and therefore if the party will have an especial Reverfal, he ought to thew the special matter, as in Englishes Case: A fine was levyed by Tenant for life, and he in the reversion being within age, bringeth a Writ of Erroz, now the fine shall be reverted as to him in the Aeversion, but not as to the Tenant for life, but here it shall be intended the Inheritance of the Wife, and that the busband hath nothing but in the right of his Wife, and therefore the thall be retto-

ed to the whole, for nothing passeth from the Husband, but he is named with his take only for conformity, 11 H. 7.19. A takes to take an Inheretric, who is attainted of Felony, the king thall not have the Land presently, by which it appeareth that all is in the Wife, and the chall be reflozed to the whole, and the Judgment thall be according to the Presidents cited before: And as to the President cited 7 Eliz. the same is not to the purpose, for the second busband was a stranger to the fine, for it would be absurd to reverse the Fine as against him. Egerton Solicitoz General; Prelibents are not to hulp, quod violari non debeant, as to be tules to other Judges, in perpetuum; and I conceive that the fine thall be reverled as to the Wife only, for the fine is but a Conveyance, and the Husband may lawfully convey the Land of his Wife for his life; and if the Husband alone had levyed the fine, the fame had bounden the Mife during his life: If a woman Lessee for life taketh to Dusband him in the Reversion, and they joyn in a Fine, the Fine shall stand as to the Inheritance of the Ousband, but shall be reverled as to the Interest of the Clife. Coke, it shall be intended here, all the Interest and estate in the Land to be in the Clife, as 20 H. 7. 1. Calhere the Ousband and Wife are bouched, it shall be intended by the reason of the Maranto of the Mife and so the tended by reason of the Warranty of the Wife only, and so the Counter-plea thall be of the feifin of the Taife and her Ancestogs. Wray, when the Dusband and Wife joyn in the fine, it hall be presumed the Inheritance of the Wife, and if it be otherwise, it ought to be specially shewed; and as to that which hath been said, that if the husband alone had levyed a fine, it thould have bounden the Calife ouring the life of the pusband, the same is true, but such fine is but a discontinuance, but the right continueth in the Wife; but when the Dusband and Wife joyn in the Fine, all passeth out of her, and if the Fine in such case for the Inheritance shall be redersed in all, to whom belongs the free-hold, to whom thall he be attendant? Gawdy, 12 H. 7. 1. In a Præcipe quod reddat against three, they bouch severally. the Toucher was not received, and yet they might have feveral Causes of Toucher, but the Law presumes they are Joynt-tenants, and have a joynt cause of Toucher, if the contrary be not shewed: And afterwards Judgment was given, quod finis predict, reverseur; and Wray said he had conferred with many of the other Justices, who were of the same opinion. Gawdy, the fine thall be reverted in all, for this is an Erroz in Law of the Court, F. B. 21. D. Foz by this fine the Dusband giveth nothing divided from the effate of the celife, but all palleth from the Wife, and therefore all shall be reverled, and if the fine should be reverled as to the Wife only, then the fine levyed now by the Dusband alone is a discontinuance, by which the Wife by the common Law hall be put to her Cui in vita, and that is not reason. Also we cannot by this Reverfal, make the Conusee to have a particular estate during the life of the Wife: And therefore the Fine is to be reversed for the whole, and as boid for the whole to the Conucee.

Trin. 30 Eliz. In the Kings Bench.

CLVIII. Cage and Paxlins Cafe.

1 Cro. 125. 3 Len. 16. Daniel Cage brought an Action of Trespass against Thomas Parlin for Trespass done in a Close of Wood, called the Frith-Close, and in the Wark, and so taking of certain Loads of Mood: the Desendant pleaded, that the Earl of Oxford was seised of the Hanner of W. of which the place where, &c. is parcel, and leased the same to J. S. so pears, excepting all Woods, great Trees, Timber-trees, and Anders woods.

woods, &c. And covenanted with the Leffec and his Afligns, that he might take Dedg-boot, and Fire-boot super dicks premiss, and spewed further, that the said I.S. assigned his Interest unto the Desendant, and that he came to the said Close called the Frish-Close, and cut the Lease of Alood there so Fire-boot, as it was lawful so him to do, &c. And Lands exceptote, that after the Lease asopelaid, the said Earl had assured the Inz ing the wood. beritance thereof to Cage the Plaintiff. And it was argued by Godfrey, heritance thereof to Cage the Plaintin. And it was argued by Godrey, that the Aesse cannot take fire-boot in the said Close, so, the wood, &c. is excepted, and was never demised, and by the exception of the wood, the soil thereof is excepted: See 46 E. 3. 22. A. leased so, life certain Lands reserving the great wood, by that the soil also is reserved, vi. 33 H. 8. Br. Reservation, 39, 28 H. 8. 13. And by the woods; Len. 16. of the Covenant, the intent of the Lessoy appeareth, that the Lesse shall have his fire-boot out of the residue of the Lands dennised, for premiss here is equivalent with predimissa. And he citeathe Case moved by Mountaine chest Justice, 4 E. 6. in Plowden, in the Case betwirt Dive and Manningham, 66. A. leaseth unto B. a Aganoz so years, excepting a Tiole, parcel of it, replying a Rent. and the Lesse is holumben ing a Close, parcel of it, rendzing a Rent, and the Lesse is bounden to perform all Grants, Covenants, and Agreements, contenta & express aut recitata in the Indenture; if the Lesse disturb the Uesso, upon his occupation of the Close excepted, he hath forested his Obligation, &c. But our Case is not like to that: And if I let the Man- Post. 122. of D. for years, except Green-meadow, and afterwards I coverant that the Leftee hall enjoy the Premisses, the same doth not extend to Green-meadow. Snagg Serjeant to the contrary, and by him pramilla, are not refrained to pradimilla, but to all the Premilles put in the former part of the Indenture of Demile, therefore the Leffe thall have Fire-boot in the one, and the other; and he put a difference betwirt all 2 Roll. 455. Moods excepted, and all woods growing excepted, for in the one 2 Gro. 524. case the soil passeth, in the other not; And as to the Case cited be Post. 122. fore in Plowden. 66. that is true, for exception is an Agreement: And he faid that by that exception the foil it felf is excepted, and thefe woods which are named by name of woods; contrary where a Close containeth part in woods, and part in Passure; And by the exception of Cimber-trees, and Cinder woods, all the other woods are excepted but not the foil: As if a man grant all his Lands in D. Land, Ageadow, Passure, and woods thereby passet; by exception of this Close of mood, the foil also is excepted. of wood, the foil also is excepted, and he conceived, that although all the woods be excepted, yet by the Covenant an Interest passeth to the Lestee, so as he may take fire-boot without being put to his Action SchedCase 155 of Covenant: As 21 H.7.30. A. leaseth unto B. for life, and Coven-Hob. 173. ants in the Indenture of lease, that he shall be dispunished of Wass, also, 198, though the same be penned by way of Covenant, yet it is a good mate 314. tet of Bar, being all by one Deed: And afterwards Judgment was 21 H. 7, 31.
given for the Plaintiff, as to that Close of wood talled Frith-Close; More 23.
but as to the Park, for the Defendant, for that Frish Close was all er; 1 Roll. 939. but as to the Park, for the Defendant, for that Frish-Close was all excepted, scile the wood and the soil: And these words, supra præmissa, thall be intended such things which were demised, and no other, and by this Covenant, the Lessee hath power to take the wood upon the other Dy. 199. Lands, although that the wood be excepted, for the soile was demised, Hob. 173. and he shall not be punished in Trespass, and put to his remedy, by 2 Cio. 172. Action of Covenant against the Lesso; and by Wray, there is not any Bridg. 117-colour against the Plaintiff so the Frith-Close, is not that the Desentational state of the first colour against that there is not any bridg. 117-colour against that there is not any look, if not the cheen Colour against that there is not any look, if not the cheen Colour against that there is not any look, if not the cheen Colour against the Colour against the Colour against the cheen Colour against the Colour dant had averred, that there is not any wood upon the other Lands not excepted but demifed; and this word, Pramiffa, doth not extend by conficuation to this mentioned before, being excepted, but only to the things demiled.

Aslumpht.

Owen 133, 134.

Request.

Trin. 30 Eliz. In the Kings Bench.

CLIX. Rivett and Rivetts Cafe.

Dmund Rivert brought an Action upon the Cale against Geoge Rivett, and declared, that where it was pretended by the Defendant, that one R. made his Will, and by the same devised certain Legacies to the Defendant, and the Plaintiff upon that had sued in the Prerogative Court of Canterbury for to disprove the sate Will: And if he prosecutus suiffer, he might have disproved the sate Will, and so defeated the Defendant of his pretended Legacies: The Defendant in consideration that the Plaintiff, ultra non procederet, did promise to give to the Plaintiff one hundred pounds; and averted, that he had succeeded his said suit; And surther declared, that licet the Defendant, ad hoc requisitussuerit tali die & anno, &c. It was moved in arrest of Judgment, that here is not any confideration, for the Defendant bath not any means to compel the Plaintiff for to furcease his fuit, for there is not any cross promise let forth in the Declaration; and although that he both surcease his suit, pet he may begin the same again, and therefore the Plaintiff ought to have thewed in his Declaration a Release or other discharge of it, as the cafe was 3 Eliz. reported by Bendloe. A. was bound unto B. in twenty pounds, and afterwards A. promifed B. that in confideration the faid A. Mould not be damnified by reason of the laid Bond, to give the faid B ten pounds, and upon that promife B. brought an Action upon the Cafe, and shewed, that the Defendant was not damnified by reason of the said Bond. But it was adjudged, that the Action was not maintainable upon that matter, because that the Plaintiff Dio not thew in his Declaration, that he had released or otherwise discharged

the Defendant of the laid Bond, and so no consideration in the case.

Another Exception was, because the request is not layed certainly, but generally, licet requisitus, and both not say by whom he was required, or what thing to do: And afterwards a Precedent was shewed, Trinit. 28 Eliz. rot. 523. betweet Smith and Smith. An Assumptit, in consideration that the Plaintiss should not implead the Defendant upon Bond; And the Plaintiff had Judgment to recover. And as to the request it ws said by Kempe, that there are many Precedents, that a Request generally layed is sufficient: And afterwards in the principal

Cafe Judgment was given for the Plaintiff.

Trin. 30 Eliz. In the Kings Bench.

CXL. Wheeler and Twogoods Cafe.

Heeler brought an Ejectione firme against Twogood, and it was found by special verdice, that the Earl of Oxford was feiled of the Manor of Hornely, in which were divers Copy-holds: And that the laid Earl isased the said Manorto one Heywood for one and twenty years, to begin two years after. Except all casualties and profits of Courts, which severally did not pass the value of fix hillings eight pence. And afterwards the Earl bargained and fold the Reversion to Anthony Cage: And afterwards a composition was made betwirt Anthony Cage and the Lessee, by which the Lessee did grant and covenant to and with the said A. Cage, that he would permit the said Anthony Cage peaceably to hold the Courts and to take the profits to his own use, Proviso, that the laid Leffee thould have the Bents of the Copp holders a freeholders: And afterwards the Teffee granted over his Interest in the

faid Cerm. It was moved by Towie, that by this Exception the Court Baron is not excepted not levered from the Manot, not deftroped, for it is incident to the Manoz, and this Covenant betwirt the Leffee and Covenant Anthony Cage amounts to a grant of the Court to Anthony Cage. See amounts to a 44 E.3. Firz. Mannors de faits 144 & 29 E.3. Burr. 280. and fee 37 H.8. & 1 E. 6. Br. Leafes 60. Chat where 1.S. Covenants, & concessi to 1. N. that he thall have twenty acres of Land in P. for one and twenty years, it is a good Leale, for this word concedir is as strong as dividit. And it was muved, that here the Earl lealed for years to begin two years after, and the Lesce being in possession, doth continue it after the two years, and afterwards before any entry the Leffee affigues over his Intereff, that the same is not a good grant, but only a Right: But by the whole Court the grant was holden good, notwithstanding the said Ecception: And it was holden also, that the Covenant (ut supra) was voids for although that Anthony Cage bath authority to hold the Courts, yet it ought to be in the name of the Leffec.

Trin. 30 Eliz. In the Kings Bench.

CLXI. Stretton and Taylors Cafe.

Stretton did inform against Taylor upon the Statute of Mury: Qui Information sequitur tam pro Domina Regina, quam pro seipso: And the Queens at upon the Statute entred upon it, &c. non vult prosequi, and that was pleaded in Bat rute of Usery. against the Informet so the whole: And by Wray, the same is not any Retrait by the Batt to the Informet. But Popham the Attorney general said, that by Queens Attorney season the Court he would maintain the authority of his place, bind the Informetic his Predetelors had enjoyed, so he said, it cannot be found by any mer. Record in this Court, Common Pleas, of the Erchequer, that the In-1 Cro. 138. & somethad proceeded where the Attorney General had made such an said. Entry, so we have not used to do it without great considerations for if the Informer hath ceased to prosecute the Suit two or three Terms. if the Informer hath ceased to profecute the Suit two or three Terms, then we used to enter a Non vult prosequi. Foz it is not reason that the Subject should be molested or attendant so long without just cause, and it is not against Law, that in personal Suits the act of one should prejudice the other: And the Queen is the principal party in this Suit; to the Replication thall be made in the name of the Queen only, and not of the Informer. And afterwards by Award of the Court it was ruled, that that Entry by the Attorney is not any Barr, quoad the Informer, fo if the Queen be Nonshir, so the Nonshir of the Intormer is no Barr against the Queen and Wray said, that such was the opinions of Anderson and Gound Australa of Anderson and Gawdy Juffices, &c.

Trin. 30 Eliz. In the Kings Bench. Intrat. Hill. 30 Eliz.

CLXII. The Queen against Lewis, Green, and others:

M Information for the Queen against Lewis, Green, and others ! A The Case was, King E. 6, was seised of the Dans of Stepneth, Grants of the wenty access of Lands in Stepneth, called Stepneth Bath, and string and the Lord Wentworth and his beits the Mand of Stepneth in the Country of Midd. Nec non maisscam in Stepneth, appel. Stepneth Path in com. predict. nec non omnia terr. & ten. eidem Manerio sive premissis pertinent. And if twenty acres, called Stepneth Marth, not partel of the said Manor pass, or not, was the Austion: Cook, that

that they shall pass: Dere this grant both consist of three parts; 1. The grant of the Mano; 2. Nec non mariscum in Stepneth; 3. Nec non omnia terras & tenementa dicto Manerio sive præmiss pertinen. And by the second clause these twenty acres shall pass, be the same parcel or not; and the latter words cannot refer to that, for it is certainly expressed before. And the case lately agreed in the Court of Wards betwirt Bronker and Robotham was cited, which was, That the King being selsed of the Adams of Sandridge and Newnam, parcel of the possessions of the Manor of Sandridge, and the king granted the Manor of Sandridge, nec non omnia terras & tenementa sua in Sandridge, dicto nuper Monasterio pertinen, nec non omnia terras & tenementa sua dicto Manerio de Sandridge pertinen. By which grant, although that the latter clause both restrain it to the adams of Sandridge, yet the general words of the second clause shall extend to make pass all the whole Manor of Newnam, which extended into the Parish of Sandridge, t a Decree was in the said Court accordingly. At another day the case was argued, and the case put to be thus. Ising E.6. was setsed of the Adams of Stepneth, which the King had by exchange of the Bishop arcs, parcel of the Manor of Stepneth, which the King had by exchange of the Bishop

Hob. 193. 303. Dy. 207. 6 Co. 39.

of the Manoz of Stepneth, which the King had by exchange of the Bishop of London, and there were allo twenty acres of Lands which were lying in Stepneth Marsh, and were known by the name of Stepney Warsh, late parcel of the possessions of the Priory of Grace, and granted unto the Lord Wentworth and his Petrs, Dominia sive Maneria sua de Hackney & Stepney, nec non mariscos suos de Stepney in Stepney prædict. nec non omnia Maneria terras & tenem. & mariscos dictis Maneriis aut cæteris præmissis pertinen. If these riaterras & tenem. & marifcosdictis Maneriis aut cateris pramissis pertinen. If these twenty acres pals in the general words in the first Nec non, or if the mords in the second Nec non (dictis Maneriis pertinen.) both restrain the generality of the first words, was the question: And by Phillips the twenty acres do not pals, sor the grant of the king shall be always taken to a common intent: And because here the king hall be always taken to a common intent: And because here the king hall be always taken to a common intent: And because here the king hall be always taken to a common intent: And because here the king hall be always taken to a common intent of the Manor of Stepney, and not the twenty acres which the king bath by a special title, although, that ex vi termini, the grant may extend unto it: Also the grant of the king shall be taken, secundum intentionem Regis, and not in deceptionem; and here it appearth, that the intent of the king was not, that these twenty acres sould pass, if the king grants Maneria sua & terras, and all Lands, &c. issue pertinendum it is not part of any thing pertinend to those twenty acres, therebut it is not part of any thing pertinen. to those twenty acres, therefore his intent was not to pals them. Secondly, the grant is to have them as fully as the Bishop of London had them, without mentioning of the Prior. Chirdly, as fully as the Bishop had granted them to us, but the Bishop had not granted these twenty acres to the King. fourthly, in the Letters Patents the King recites the value of the Manoz of Hackney and Scepney, but no value of the twenty acres, (Quere, what difference there is betwitt Scepney Parth and the Marth of Stepny.) As to the first, the grant is issued as in premiss pertinen. which word premiss includes the premisses of otherwise should be voto: Secondly, the words, as the Bishop had, and as amply as we have from the Bishop, are suplusage, & nihiloperatur by them. And if the King had not the same of the Bishopit is not material, but they shall pass not-withstanding, because by a special name: As if the King grants to me Manerium de Dale, guod à nobis nuper concelat, soit, and in truth it we not concealed, pet it shall pass by his special name: But if the grant had been, Provise, that if the standard were concealed. So the same had been good Provifo, that if the fair manor were concented, acthe fame had been good, to tt is good by way of Proviso, but not by reference. As to the valuation the same is not material, for who can restrain the bounty of the sing. 19 E. 3. 7. and 8. The King granted omnes Advocationes

Grants of the King taken according to his intent.

pertinend. to fuch a Priory, quas nuper concessimus patri of the Patentee, als though the King had not ever made fuch a grant, pet it is a good grant to the Sons, causa qua supra. Gawdy Justice conceived, that the twenty acres bid pals, and he contested the case betwirt Bronkor and Robotham to be good Law, for there the intention is fully, that all appertaining to the Donastery, whether it were parcel of the Dannor of Newmam or of Sandridge, patieth, 6 E. 6. 8. Dyer. A man leadeth all his Weadows in A containing ten acres, whereas in truth they are twenty acres, all passeth, &c. And if the King grant the Danoz of D. to A; and suther saith, Damus & concedimus, so freely as I.S. had it, and I.S. never had it; yet the grant is good: And as to the milrecital of the value, the same is helped by the Statute. Clench Justice to the same intent; and the Jury hath found, that the twenty acres are parcel of Stepney Barth. Wray to the same intent, Against express words no favour shall be given to the King. And note, that the Marthes pertaining to the Manozare in the third claufe, ergo, the Marth in the fecond claufe thall be intended a Marth in grofs, or otherwise it thousand be idle. And afterwards Judgment was given against the Queen.

Trin. 30 Eliz. In the Kings Bench.

CLXIII. Piers and Leversuchs Case In Ejectione firma.

T was found by special verdict, that one Robert Leversuch Grand father of the Defendant, was Cenant in tail of certain Lands, whereof, ac. and made a Leafe for years to one Pur. who assigned it over to P. sather of the Plaintiss. Robert Leversuch died; W. his Son and Deir entred upon P. who re-entred. W. demised without other words the Land to the said P. soy life, the remainder to Joan his Wife for life, the remainder to the Son of P. soy life with warranty, and made a Letter of Attorney therein to enter and beliver feilin accordingly. P. vied befoze that the Uivery was executed, and afterwards the Attomey made livery to Joan. W. died; Ed: his Son and Peir entred upon the Wife, the re-entred, and leased to the Plaintiff, who upon an outer brought the Action. Heale. When P. entred upon W. Leversuch the issue in tail, he was a diffeifoz, and by his death the Land descending to his Deir, the entry of W. Leversach, the iffue in tail, was taken away. Cook contrary. P. by his entry was not a diffeifoz, but at the Election of W. foz 3 Cro. 222. when P. accepted such a deed from W. it appeareth that his intent was not to enter as a discillent; and it is not found that the said P had any Son and wheir at the time of his death, and if not, then no descent; and there is not any discillin found that P. expulic Leversuch out of the Land. And Judyment was given against the Plaintist. And Cook cited a Case which was adjudged in the Common Pleas, and it was the Case of Shipwith; Grand-father, Cenant in tail, father and Son; The Grand-father died, the father entred and paid the Rent to the Lessor, and died in possession, and adjudged, that it was not any descent, for the paping of the fient both explain by what title be entred, and so he shall not be a Disseisog but at the Election of ano

De Case was, that A. by his Deed Poll recited, That (whereas he was) pollefled of certain Lands for years of a certain Term; By good and lawful conveyance he affigued the fame to I. S. with di. vers Covenants, Articles and Agreements in the faid deed contained, which are or ought to be performed on his part. It was moved, if this recital (whereas he was) be an Article or Agreement within the meaning of the condition of the faid Obligation, which was given to perform, &c. Gawdy conceived, that it is an agreement: For in luch cale I agree, that I am possessed of it, for every thing contained in the deed is an Agreement, and not only that which I am bound to perform: As if I recite by my deed, that I am possessed of such an interest in certain Land, and affign it over by the same beed, and thereby covenant to perform all Agreements in the veed, if I be not possested of fuch Interest, the covenant is broken. And it was moved, if that recital be within these words of the condition (which are orought to be performed on my part.) And some were of opinion, that it is not within those words; for that extends only in furuum, but this re-

cital is of a thing past, or at the least present.

Clench. Accital of it felt is nothing, but being joyned and considered Recital. with the rest of the deed it is material, as here, for against this reck tal he cannot say that he hath not any thing in the Cerm. And at the length, it was clearly resolved, that if the party had not that Interest 2 Cro. 281. Yyl. 206.

Trin. 30. Eliz. In the Kings Bench.

by a good and lawful conveyance the Obligation was forfeited.

CLXV. Page and Jourdens Case.

M Trepals betwirt Page and Jourden the cale was: A Moman Ten-Int intail took a Dusband, who made a fcoffment in fee and died. be wife without any Entry made a Leale for years: It was moved, that the making of this Leafe is an Entry in Law. As if A. make a Teale for years of the Land of B. who enters by force of that Leale, now the Lessoz without any Entry is a Disselloz. And it was resolved, that by that Heat:, the free-bold is not reduced without an En-

A general entry amounts to a diffeifin.

Trin. 30. Eliz. In the Kings Bench.

CLXVI. Havithlome and Harvies Case.

Action upon the Statute of verf. West.

Havithlome brought an Action upon the Statute of 5 Eliz. cap. 9. a. grainff Harvy and his Wife for the penalty of ten pounds given by s Eliz. cap. 9. the tato Statute againft him who was ferved with process, ad teftifican-1 Cro. 130. dum, &c. and both not appear, not having any impediment, &c. and 3 Cro. Goodwin. thewed that process was ferved upon the Defendants Wife, and lufticient charges, having regard to her degree and the distance of the place, &c tendred to her, and pet the did not appear. And it was found for the Plaintiff. It was moved in arrest of Judgment, that the Declaration is not good, because the Plaintiff in setting forth that he was damaged for the notappearance of the Edife according to the prosers, hath not thewer how damnified: Also it was moved, that a feme Covert

Covert is not within the faid Statute, for no mention is made of a

Covert is not within the fair Statute, for no mention is made of a feme Covert, and therefore upon the Itatute of West. 2. cap. 25. If a seme Covert fail of her Kerozu, the thail not be holden distincted, not imprisoned. Also here the Declaration is, that the Plaintiff tenvered the charges to the Wisie where he ought to have tendered the same to the Kushand.

Cothete three Exceptions it was answered. 1. That although the party he not at all hammisch, yet the penalty is sweited. 2. Feme Coverts are within the said Statute, otherwise it though he a great mischeif, so it might be that the might be the only witness; and Feme Coverts, if they had not been expelly excepted, had been within the Statute of 4 H. 7. of Fines. 3. The wife ought to appear, therefore the tender ought to be to her: And afterwards Judgment was given so; the Plaintist.

Pasch. 30 Eliz. In the Kings Bench.

CLXVII. Dellaby and Haffels Cafe.

The an action upon the Take, the Plaintiss veclated that the Defendant in consideration that he had retained the Plaintiss to go from London to Paris to Aperchandize diverse goods to the profit of the Defendant, promised to give to him to much as hould content him, and also to give him all and every sum of money which he hould expend there in his Assairs; and sutther veclated, that he was contented to have twenty-pounds so his labour, which the Dasanant resuled to pare twenty-pounds so his labour, which the Dasanant resuled to pare twenty-pounds so his labour, which the Dasanant resuled to pare the authority was taken to the Declaration, because there is not set down any place of time of the notification of his contentment, so the same is traductable. Gawdy, The Much here is, non Assumptic, and Assumptic that matter is out of the Book. Cook, If one assume to pary twenty pounds to another upon request, although the Desendant plead, non Assumptic, pet if the place and time of request be not shewed, Jungment many times both been saved, so no Asson without a Request, so here webbut notification of his contentment, no Asson is the Assumption to be given to make certainty of the station is the Assumption to be given to make certainty of the duty, but not to ensorce the promise; but in our case, without a Request Assumptic will not live; But not necessary to be shewed, but the general form shall serve, so the number of the Executors to take them, he need not to shew the cime and place is not necessary to be shewed, but the general form shall serve, so this and minute of the asson so time, and assent of the Asson, and the shewing of the contentment is only to reduce the Asson, and the Asson, and the shewing of the contentment is only to reduce the Asson, and the Asson so the Bation, and the shewing of the contentment is only to reduce the Asson, and the Asson, and the shewing of the contentment is only to reduce the Asson to certainty: And Ludgment was given so the Plaintiss. the Action to certainty: And Judgment was given for the Plaintiff:

Trin. 30 Eliz. In the Kings Bench.

CLXVIII. Musket and Coles Cafe:

Miliam Musice brought an Action upon the Cale against Cole, and construction, that the plaintist had paped unto the Detendant forty skillings, for the Debt of Symon his Son, the Defendant premised to between to him, owner tales bills & Obligationes, in which his Son was bounden to him; which thing he mould not bo, and it was found by Aeroice for the Plaintist And it was moved for may of Judgment, because the Plaintist had not abserted in his Declaration.

Averment.

ration, that the fair Defendant had Bills of Obligations, in which simon his Son was bounden to the Defendant, for if there were none, then no damage. And see Onlies Case, 19 Eliz. Dyer 356. D. in consideration that the Plaintist had expended divers sums of money circa the businesses of the Defendant, promised, &c. Exception was taken to that Declaration by Manwood and Mounson Justices, because it was not thewed, in what bulineffes certain, and betwirt what perfons. Gawdy, The Plaintiff here is not to recover the Bills of Obligations, but damages only, and therefore needeth not to alledge any Bills in certain. And 47 E.3.3. A. covenants with B. to affure unto B. and his petrs,omnia terras & tenementa quas habet in luch Counties, and for not aflurance, an Action of Covenant was brought, and the Plaintiff declared, that the Defendant had broken the laid Covenant, and that he had required the Defendant to make a feofiment unto him of all his Lands and Tenements in the laid Counties; and the plea was not allowed, for the Land is not in demand, but only damages to be recovered. See also 46 E. 3. 4. and 20 E. 3. And in the principal case, the Plaintiff had time enough for the shewing to the Jury what Bills or Obligations for the instruction of the Jury of the damages. instructing of the Jury of the damages.

Trin. 30 Eliz. In the Kings Bench.

CLXIX. English, and Pellitary and Smiths Case.

Affault and Battery. 1 Cro. 139, 140.

IN an Action of Trespass of Assault and Battery and wounding: The Defendants say, that they were Lesses of certain Lands, and the Plaintiff came to the said Lands, and took certain Posts which were upon the Lands, and they gently took them from him. S. pleaded, that he found the Plaintiff and P. contending say the said Posts, and he to part them mollice, put his hands upon the Plaintiff: which is the same, &c. The Plaintiff replyed, De injuris said per said per the said per them. ipfos P. & S. allegat. upon which iffue was joyned, which was found for the Plaintiff. It was moved in access of Judgment, that here was not any issue, for the Plaintiff ought severally to reply to both pleas acceptate, for here are several Causes of Justification, and his Replication, absque tali causa, both not answer to both. Cook, This word (Causa) is, nomen Collectivum, which may be referred to every Caule by the Defendants alledged, reddendo fingula fingulis, and their Justifications are but one matter, and the Defendants might have all joyned in one plea. Wray, Both pleas depend upon one matter, but are several causes; for two justifie by reason of their Interest, and the third for the preservation of the Peace. And by him and the whole Court, although it be not a god toth of pleading, pet by realonable confirmation this word (Cause) shall be referred to every cause, and so the pleading shall be maintained: And afterwards Judgment was given against the Plaintist.

Nomen Colle givem. Pol. 139. Dy. 182.

> Trin. 30. Eliz. In the Kings Bench. Intrat. Hill. 30 Rot. 58. or 581. no of contract.

> > CLXX. Cater and Boothes Cafe.

Is a Writ of Covenant the Plaintiff declared, that the Defendant by his deed, bearing date the first of October, 28 Eliz. did covenant, that he would do every act and acts at his best endeavour to prove the certifi of I. S. or otherwise, that he would procure Letters of Administration, by which he might convey such a Cerm lawfully to the Plaintist, which he had not done, licet fæpius requifitus, &c. The Defendant pleaded that he came to Docto: Drury into the Court of the Arches, and there

Covenant.

offered to prove the Will of the faid 1. S. but because the Wife of the faid I.S. would not twear, that it was the Will of her Busband, they could not be received to probeit; apon which it was demurred in Law. It was moved by Williams, that the Action both not lie, for there is no time limited by the Covenant when the thing hould be done by the Defendant, for which he hath time during his life, for as much as it is a collateral thing. See 15 E.4. 31. If there be not a Request before, but admit that the Covenant had been to perform upon request, then the Plaintiff in his Declaration ought to have thewed an expres ce- Request. quest with the place and time of it, for that is traversable. See 33 H. 6.47,48.9 E 4 22. Gawdy, If the Covenant had been eppearly to do it upon request, there the request ought to be shewed specially: But when a thing upon the expolition of the Law only is to be done upon Request. fuch Aequest alledged generally is good enough. And by Wray, the Covenantoz bath not time during his life to perform this Covenant, but he ought to do it upon request within convenient time; but in some case a man shall have time during his life, as where no benefit shall be to any of the parties, as if the condition were to go to Rome: And as to the Request, he conceived, that it ought to be thewed special. ly and certainly; for it is for the benefit of the Covenantee, for without request, the Action doth not lie, which Clench granted. And it was holden by the whole Court, that the bar shall not help the insufficient Declaration: No moze, if the Desendant plead, Non Assumption, yet the vefect in the Declaration of a Kequest not duly shewed, remainether Gawdy, The bringing of the Action is a Kequest. Clenched Wit of Debt is a Pracipe, for which there, licet fapius requilitus, is fufficient; but a 10/16 of Covenant ignot fo.

> Trin. 30 Eliz. In the Kings Bench. CLXXI. Piers and Hoes Case.

band and his Deits. Popham, I conceive that here is a forfeiture, for here owen 64. are several limitations, limitation of the estate unto one, and of the use 2 Gr. 200, unto another: And the words (for the life of the Mise) do not refer 201. to the estate, but to the use, with proximum aniecedens; And he resembled 3 Gr. 167. the same to the case of Leonard Sturton, in which he was of Councel. A Hob. 373. man granted Lands, Habend, unto the Grantee, to the use of the Orantee, and the Deits of his body; the same is no exate tail in the Orantee, but only an estate sor life, sor the Limitation of the use cannot extend the estate. Cook contrary. The case is, that A Wise of one Piers, being Tenant sor life of the Joynture of the sato Piers, took to Husband Hoe, they both by Deed grant totum soum Messagium. to othe Clarke, Habendum to him and his Deits sor the life of the Mise only, I conceive, that here is not any sofeiture, so it is him Wille only. I conceive, that here is not any fosfeiture, for it is but one intire lentence: And if there be a double confiruation of a veed, that which is most reasonable hall be taken, so as wrong be not done, and therefore these mores (for the life of the Wille) Hall Construction telec unto both, soil the estate and the use, and their intentwas of Deeds, not to commit a sosseiture, as appeareth by the words of the Deed, for

for they grant folium meffuagium, and that was not but for the life of the wife ad folim usim of the Feotiee and his petrs, during the life of the Wife, and violence fould be offered to this most (folum) if the feoffee or his beits, hould have ultra the life of the Calife; and the word (cantum) or his petrs, mound have alter the lite of the calter, and the word (antum) cannot otherwise be expounded, but that the estate so like only shall pass from them: And he cited the Cale of 34 K.3. Avoncy 238.A. gives Lands anto B. in tail, and so default of such issue, to the use of C. in tail, rendring Kent, the same render shall go to both the estates: Ho a Lense so life to A. the remainder to B to the use of C. the same use go eth out of both the estates, and not only out of the Kemainder; so here upon the same reason, these words, for the life of the wife, shall refer to the first estate, as well as to the use; And in such Cales the rule of Readon purch to be observed. of Bracton ought to be observed, viz. Benigns faciends sunt interpretationer verborum, ut res magis valeat, quam pereat. As the Case in 6 H. 7.7 in a Cessavit, the Plaintist counted, that the Cenant held by homage, fealty, Sute at Court, as certain Rent, and in the voing of the services asociate, the Defendant had cessed, and in not boing of homage and fealty, a man cannot cesse by two peats; But it was holden that the said Cessavit should be referred to such services only, in which one might cease, and that is Sute of Court, and Rent; and if pleadings shall have such favourable construction, a multo fortiori, shall a Deed, 4 E. 3. Wast. 11. A man leased for life, and by the same deed granted power unto the Lesse, to take and make his prosit of the said Lands, in the best manner spould seem good to him without contradiction of the Lesse or his Peirs; pet by those words it is not lawful so, him to do was, so, there it is said, that in construction of Deeds, we ought to sudge according to that intent, which is according to Law and season, and not to that which is against reason. See 17 E 3.7. accordingly, so in the principal of Bracton ought to be oblerved, viz. Benignæ faciendæ funt interpretationes verwhich is against reason: See 17 E 3.7. accordingly, so in the principal Case, the words in the Deed of Fromment shall be so expounded, that

the estate be laved and not destroyed.

Popham contrary, The Cases put by Coke are not like to the Case in question; For where the Kent is out of both estates the same is but reafon, for the Bent is in respect of the Land, and because he beparts with both effates, it is reason the Nent issue out of both; and the like reason is of the Case of an use, so, if a man makes a Lease so, life to a the Remainder over to B. the same shall be to their use respectly, and if he do express the use, the same shall be accordingly, and shall bind both effaces, but there Clark hath two estates, one by the common Law, and the other by the Statute; But the words subsequent (for the life of the wife only) cannot refer to both estates: A gives Lands to one this beirs for forty years, the same is but a plain Cerm for years: But if a Feofiment in Fee be made to one this Deirs to the use of another for forty years, there the fee passeth to the feosite, and the Term to Cestry que use. Gawdy conceived, that it is not any forseiture, for these words (during the life of the wise only) were put in the Deed to express the intent of the parties, and therefore the same shall not be volo, and he conceived that they were put in, to exclude the forseiture, and therefore they hall ferve for that purpole. And afterwards it was refolved by all the Justices except Gawdy, that it was a forfeiture, for by the Feosiment the Fee simple passeth, and that to the use of the Feosimist the estate, and the use are several things, and the limitation for the life of the Wife cannot extend to both: And as to the Book of 24 H.8. Br. Forfeiture 87. Cenant for life aliens in fee to B. Habendum fible heredibus fais, for Term of the life of the Cenant for life, the fame is not a forfeiture, for the whole is but the limitation of the effate: And afterwards it was adjudged that it was a forfeiture, Gowdy continuing in his figurer opinion: And VVray faid that he had conferred with the other Judges of their Poule, and they all held clearly, that it is a forfeiture.

. Cro. 167.

3 Cro. 167, 168

Trin. 30 Eliz. In the Kings Bench. Rot. 528.

CLXXII. Toft and Tompkins Case.

Don a special verdict the case was, that the Grand-father, Tenant for life, the Remainder to the Father in tail, that the Grand-father discontinumade a feofiment in fee to the use of himfelf for life, the Remainder ance. to the Father in fee; And afterwards they both came upon the Land, i Cro. 135. and made a fromment to Tompkins the Defendant. Coke, There is not any discontinuance upon this matter, for the Father might well wave the advantage of the forfeiture committed by the Grand-father; then when the father joyns with the Grand father in a feoffment, the fame declares that he came upon the Land, without intent to enter for a forfeiture: It was one Waynmans Cafe, adjudged in the common Pleas, where the Diffeifice cometh upon the Land to deliver a Release to the Diffeiffor, that the fame is no Entry to reveft the Land in the Diffeiffee: Then here it is the Livery of the Tenant for life, and the grant of him in the Remainder, and he in the Remainder here was never felled by force of the tail, and fo no discontinuance. Godfrey, bere is a Remitter by the Entry, and afterwards a discontinuance, for by the Entry of both, the Law thall adjudge the possession in him who bath right, &c. Gawdy, This is a biscontinuance, for when the father entreth, ut supra, he shall be adjudged in by the sufficience, and then he hath gained a policition, and to a discontinuance, for both cannot have the possession. Clench, The intent of him in the Aemainder when he entred was to joyn with the Grand-father, and when his intent appeareth, that the estate of the Grand-father, and his own also shall palle, that both declare that he would not enter for the forfeiture: Shute agreed with Gawdy.

Trin. 30. Eliz. In the Kings Bench.

CLXXIII. Broake and Doughties Cafe. Hill. 31 Eliz. Rot. 798.

MAction upon the Cafe for words, viz. Thou wast fortworn in Action upon The Court of Requelts, and I will make thee fand upon a Stage the Cafefor to it: It was found for the Plaintiff. It was moved in arrelt of a Cro. 135.

Judgment, that the Action will not be for these words, for he doth not lay, that he was there for word as Defendant, or witness: And Trin.

28 Eliz. betwire Hern and Hex, thou wast for word in the Court of Whitchurch; And Cudament of her against the Polaintiff. church; And Judgment given against the Plaintist, for the words are not Actionable, and as to the relidue of the words, I will make thee stand upon the Stage for it, they are not Actionable, as it was adjudged between Rylic and Trowgood, If thou hads Justice thou hads stood on the Pillory; and Judgment was given against the Plaintiff. Daniel contrary, thou was forlworn before my Lord chief Justice in an Evidence, these words are Actionable, for that is perjury upon the matter, and between Foster and Thorne, T. 23 Eliz. Rot. 882. Chou wast falsty fortworn in the Star-Chamber, the Plaintist had Judgment, for it shall be intended that the Plaintist was Defendant or a Peponent there: and yet the words in the Declaration are not in the Court of Star-Chamber. Wray, Chou art worthy to ftand upon the Pillory, are not Actionable, for it is but an implication; but in the words in the Cale at the Bar there is a veheinent intendment, that his Dath was in the quality of a Defendant, or Deponent; which Gawdy granted. In the Cale 28 Eliz. Then was forlworn in Whit-

Church Court, there the words are not actionable; for that Court is not known to you as Judges. And it may be it is but a great bouse or Mansion house called Whischurch Court: But here in the principal case it cannot be meant but a Court of Justice, and before the Judges there juridice, and the subsequent words sound so much, I will make thee stand upon a Stage for it. And afterwards Judgment was given for the Plaintist.

Trin. 30 Eliz. In the Kings Bench.

CLXXIV. Gatefould and Penns Cafe.

Prescription for tythes. I Cro. 136. 3 Len. 203, 267. Antez. 94. Arefould Parlon of North-linne libelled against Penne in the spiritual and court for tythes in kind of certain passures: The Decembant to have prohibition both surmise, that he is Inhabitant of South-linne, and that time out of mind, &c. every Inhabitant of South-linne, having passures in North-linne hath paid tythes in kind for them unto the Arecars of South-linne, where he is not resident, and the Aicar hath also time out of mind paped to the Parlon of North-linne for the time being two pence for every acre. Lewis, This surmise is not sufficient to have a prohibition, for upon that matter Modus Decimandi shall never come in question, but only the right of tythes, if they belong to the Parson of North-linne, or to the Aicar of South-linne, and he might have pleaded this matter in the spiritual Court, because it toucheth the right of tythes, as it was certified in the Take of Bashly by the Dodors of the Civil Law. Gawdy, This prescription both stand with reason, for such benefit hath the Parlon of North-linne, if any Inhabitant there hath any Passures in South-linne. And afterwards the whole Court was against the prohibition, for Modus Decimandi shall never come in debate upon this matter, but who shall have the tythes, the Aicar of South-linne, of the Parlon of North-linne? and also the prescription is not reasonable.

Trin. 30 Eliz. In the Kings Bench.

CLXXV. Gomersal and Bishops Case. Hill. 31 Eliz.
Rot. 175.

I Cro. 136.

Dishop livelled in the Spiritual Court for tythe Pay, the Plaintiff Gomersal made a surmise, that there was an agreement betwirt the court parties, and for the yearly sum of seven shillings to be paid by Gomersal unto Bishop, Bishop sathfully promised to Gomersal, that Gomersal should have the tythes of the said Land during his life. And upon an Attachment upon a Prohibition Gomersal declared, that for the said annual sum Bishop leased to the Plaintist the said tythes for his life: And upon the Declaration bishop did demur in Law sor the variance between the Surmise and the Declaration; sor in the Surmise a promise is supposed, sor which Gomersal might have an Action upon the Case, and in the Declaration a Lease. But note, that the Surmise was not entred in the Aoil, but was recoived by it self, and the Declaration only enrolled. Sodsrey, It was resolved in the Case betwirt Pendleton and Hunt, that an Agreement betwirt the Pacson and any of his Parishioners is a good cause to grant a Prohibition, if he libel in the Spiritual Court cannot try it, and they will not allow such Plea. Curia, The Surmise is as a Writ, sor which is variance be betwirt the same and the Declaration all his naught.

Prohibition for tythes. Trin. 30. Eliz. In the Kings Bench.

CLXXVI. Colebourn and Mixstones Case. Intrat. Hill. 31. Eliz-Rot. 146.

Olebourn was fued in the Spiritual Court, for that being Executor to one Alice Leigh, he had not brought in a true Inventory of all the goos of the faid Alice, but had omitted and left out a leafe of two houses, and this fuit was at the pursuit of two Daughters of the Teffator. Colebourn fueth for a Prohibition; and furmiles and declares, how this Leafe is ertinat, and the matter was this, H. Leigh was leiled of a houle called the Marigold, and two other houles in London, and lealed the laid two houses to one Alice Cheap for 21 years, if the thould live to long, and af terwards made a Leafe in Reversion of the faid two houses to the faid Alice Leigh for 21 years, and afterwards he deviced thefe two boules, and Deviles. allo the house called the Marigold to the fait Alice Leigh for her life for to bring up his children, and died, after whole death the law Alice Leigh entred into the law houle called the Marigold, and took the rents and profits of the law two houles for the space of 7 years, virtue testament. prædia upon which Declaration the Defendants do demurr in Law. Coke, the Declaration is not good, and for the matter of it, it is clear, that by this devile unto Alice, her Term in future is not extina without her agreement to it: And also in this Case the Devile is not for the benefit of the said Alice Leigh, but of her children, and the bath liberty to accept or refule the fald estate by devile, and to make her election: And the Extinguish-Plaintiff hath declared, that she hath accepted the Rent referred upon ment. the Leafe of the faid two houses to 7 years: And therein the Declaration naught in others respects. 1. De hath declared, that the faid Alice Leigh bath accepted the Rents of the laid two houses, by reason of the revertion, & virtue testament prædict. by 7 years, which is double and treble; for acceptance of a Rent at one day, scil. one rent day is a sufficient election: As if the Issue in tail, after the death of his Ancestor, who hath made a Leafe not warranted by the Statute, once accepts the Rent, the Leafe is affirmed; but if in pleapleading, the acceptance of the fair Rent for 3 years be pleaded, the same clearly is not god; for no god Issue can be taken thereupon. 2. This acceptance is not pleaded (as the Law wills) and in the physic of the Law, viz. to which device the agreed, but pleads the acceptance of the Aent, which is matter of evidence, the which is not good pleading. As 5 H.7.1. One sweateth another to enter into his Land, and the same to occupy for a certain time, estate execut. the same a Lease in Law; and if in pleading the party is to make his ed. title to the same Land, he ought to plead it as an expres Leafe, and not as a Licence; and if the Leafe be traverled, he may give the Licence in evidence. Tantield, presently by the devile, the estate for life is in the Devicee and the Term extina by it, and that is sufficient for the Plaintiff: And if there was any disagreement the same is to be shewed on the other fide. But if Alice had not notice of the Devile, but dieth befoze notice, the same amounteth unto a disagreement. And as to the pleading of the Agreement, I conceive its well enough pleaded, for if the Leale had not been the might have entred, and then it such Entry had been pleaded it had been good enough; and then because the could not enter by reason of the faiolease, the path taken the rents and profits which is an actualagreement, and as firong as an Entry. Also we have thewed that the had entred into the house called the Marigold, of which the Devilor died Assemnot to teised in possession, and that is a sufficient agreement for the whole, for be apportioned it is an entire Legacy. As is E. 3. Clariance 63. If the Reversion of three access be granted, and the Cenant for the account for one

acre, it is a good attornment for the whole, for he cannot apportion his affent: and 2 E. 4.13. If the Executor veliver unto the Devilee gods to him deviled to redeliver them to him again at luch a day, the same is a god affent, and execution of the Devile, and the words of the re-relivery are void. Gawdy, The devile both not veli the estate in the Calife until agreement, where a man takes in a second degree, as in a Remainder the same bells presently before agreement, but where he taketh immediatly it is otherwise, and he held the agreement was well enough plead. ed. Wray, Presently upon the death of the Testator, the free hold rest ed in the Devisee, and it was not an Agreement, ut supra, by taking of the Aents, yet the entry into the Marigold was a consent, and an Execution of the whole Legacy; and as to the rest he agreed with Gawdy. Clench, The free hold refted prefently in Alice Leigh before agreement, also the entry into the Marigold is an execution of the whole Legacy to the Devisee, soz her entry shall be adjudged most beneficial toz her; and that is, soz all the three houses.

Trin. 30 Eliz. In the Kings Bench.

CLXXVII. Stransham and Medcalfes Case.

1 Cro. 178.

CTransham libelled in the Court of the Bishop of Norwich against Medcalfe, for a portion of Cithes, as farmor of the Rectory of Dunham: the Parlon of Stonham came in and faid, that the Land, whereof the Tithes are demanded, is in his Parith of Stonham, and not in the Parith of Dunham; and afterwards fentence patted against Stransham; who brought an Appeal, and notwithstanding that, by the Statute of 32 H. 8. cap. 7. the spiritual Judges may proceed to make process against the Appellant for costs, for the principal matter, scil. parcel, or within such a Parish or not, is tryable at the Common Law. Cook now prayed a Consultation; and he consessed (ut supra) that the matter was tryable at the Common Law, but yet the costs were not given for the matter, but No Prohibition for the unjust veration, and it was his fuit and own act to profecute the for costs in the fame in the Spiritual Court. Note, that Stransham had a Prohibition for costs in the spiritual Court. Note, that Stransham had a Prohibition to stay the proceedings sor the costs, sor in some cases the Plaintist himself, who libelleth, may have a Prohibition, and that was the case betwirt Wignal and Brook. And afterwards a Consultation was granted by the Court; sor Stransham had begun the suit in the Spiritual Court in the wincing matter, and therefore he cannot have a Prohibition in the principal matter, and therefore he cannot have a Prohibition for the coffs. But afterwards Judgment was flaved, for the law Statute speaks specially in case of Cithes, where the Court hath Jurisdiction, and here it hath not of the matter: But it was faid, that if a Confultation be once granted, the party thall never have another Prohibition in the same cause, as it was holden in the case betwirt Hoskins and Jones.

I Cro 277.

Pasch. 31 Eliz. Rot. 186. In the Kings Bench.

CLXXVIII. Chamberlain and Thorps Case.

Recognizances in London, by custom. 1 Cro. 186.

Debt upon a Recognizance acknowledged in London, the Plain tiff beclared, that London is antiqua Civitas, and that they have used time out of mind, &c. That the Mayor take Recognizances of any perfon being of full age, and not a feme Covert, every day in the year, except Sundays, boly-days, Counsel days, and days of Quarter Sessions and Gaol-delivery; And declared further, how that the Defendant fuch a day ofd acknowledge a Becognizance to him, &c. Tanfield, the Declaration is not good, but the cultom, as it is laid is unreasonable, for thereby the Mapor map take Aecognizances of Idiots, men of Non farm Memorise, &c. nor is it restrained to any persons, or to any matters, but is too general, and therefore cannot be a good untom. Gawdy, The Declaration is good notwithstanding the Erception for want of aberment, so that ought to come in on the other so. And as to the custom I conceive it is not good, so, it is hard, That they should take Recognizances of all Persons, and so, all Caules which rise out of the City, and through the whole Kealm, as well as within the City: also none shall take a Kecognizance, but a Judge of Kecodo, and a Kecognizance cannot be taken by prescription. As to the first Erception, Wray agreed with Gawdy, and as to the Custom, be held the same to be good. For it hath been always allowed, and their customs are consumed by Act of Varliament which makes them good. But it so can unreasonable Custom, for it is sor the benefit of the Subjects to have security for their Debts. Coke, The Recognizance makes the Debt local, and therefore 13 Rich. 2. dar. 649. Debt was brought in London upon a Kecognizance acknowledged in the Thancery at Westminster, and the Writ was abated; sor the Kecognizance makes it local there; and by him the custom stands with reason: The Mayor is such a person who may take a Recognizance, sor he is a Judge of Record. See 1 H. 7.20. and Br. Kecognizance 8. and the Kecognize cannot have an Action of Debt upon this Kecognizance elsewhere than in London. For it is not a Debt out of the Jurisdiction of the Court, sor the Recognizance bath made it local. Wray, If the Kecogniside cannot have an Action of Debt upon this Kecognizance was good. Tanseld, The safe have in first local. Wray, If the Kecognizance of more than the same in of the other sube, and the Plaintist needs not she have an Action for Debt apon they of London cannot take Kecognizance of more than they can hold plea of it. Wray, They have used of long time to take Kecognizances, and their customs are construed by Parliament, and a more itange

Hill. 32 Eliz. Rot. 434. In the Kings Bench.

CLXXIX. Pierce against Howe.

A Ration upon the Cale for these words, Pierce hath taken a false Adion upon the Doth in the Consistory Court of the Bishop of Exeter, and upon the case for the Declaration, the Defendant did demur in Law. And by Prideaux words, these words are Actionable, although the perjury be supposed to be comitted in the spiritual Court; for he shall be excommunicated if he will not appear, and he shall do pennance in a White sheet, which is as great a disgrace as to be set upon the Pillory. And it was ruled in an action upon the case betwirt Dorrington and Dorrington, upon these words, Chou art a Bastard, that an action lyeth, and yet Bastardy is a spiritual matter, and there determinable; So so, these words, Thou art a Pitate, an action lyeth, and yet Piracy is not punishable by the common Law, but in the Court of Admiralty. And these words, he hath taken a fasse oath, do amount to these words, he is software. Wray conceived, that the words are not actionable, so, there is a provisio in the Statute of Eliz. cap. 9. Chat the said act shall not extend to any Ecclesiassical Court, but that every such offendor shall be and may be punished by such usual and ordinary Laws as heretosofe have been, and is yet used, and

frequent in the faid Ecclesiastical Court. Gawdy upon these words, an action both not lye, for they are not pregnant of any perjury in the Pl. for he may be meet passive in it: for if one of the Masseers of the Chancery minister an Dath unto any person, or any Commissioners, &c. and the Plaintiss swearch false, a man may say, That the Masser of the Chancery, or the Commissioner hath taken a false oath, and yet he is not guilty of falsity. And afterwards Wray, murate opinione, That the Movission in the said Statute, six to this intent, That notwithstanding the said Statute, such an offence may be enquirable and examined in the Ecclesiastical Court in such manner as it was before, but the same both not take away orrestrain the authority of the Common Law, but that such an offence may be here examined. And it hath been lately adjudged in the Star-Chamber, That such perjury was examinable there, for it is not restrained: and as to the latter exception, upon these words she hath taken a false oath) it shall be intended actively, and not passively, and it so, the Desendant ought to have so pleaded it, and afterwards Judgment was given sor the Plaintiss.

Trin. 30 Eliz. In the Kings Bench.

CLXXX. Palmer and Smalbrooks Case.

1 Cro. 178. Owen 97. 3 Len. 227. In an action upon the Cale by Palmer against Smalbrook, The Plaintist declared, That the Defendant had recovered a certain Debt against A. and thereupon purchased a Wit of Capias against A. to take his body, and belivered the said Capias to the Plaintist being then Sherist, and prayed a Marrant for the serving of the said Capias; and that he mould name in it, one B. for special Ballist, and promised the Plaintist that is B. arrested A. by sorce of the said Capias, and suffered him to escape, That he would not sue the Plaintist for the escape; and shewed surther, That he mode a Marrant according to the said Capias, and therein named and appointed the said B. his special Ballist, who artested A. accordingly and afterwards suffered him to escape, and the Defendant notwithsanding his promise aforesaid, sued the Plaintist, for the said escape. And it was found for the Plaintist; It was moved in arrest of Judgment, That the promise is against the Law, to prevent the punishment instituted by the Statute of 23 H. 6. upon the Sherist, and it is meerly within the Statute, and so the Prisoner, nor of any for him, and therefore it is not within the Statute, as it was in Danvers Case. Wray, Appomise is within the Statute as well as a Bond; but the Statute both not extend but where the Bond or promise is made by the Prisoner, or by any for him; And after Judgment was given for the Plaintist.

Hill. 30 Eliz. In the Common Pleas.

CLXXXI. Mounton and Wests Cafe.

Owen 38. Plowd. 520. Co. 1 Inft. 227. Dyer 37.

To Trespass by Mounson against West, the Jury was charged and evidence given, and the Jurours being retired into a boule so to connoer of their evidence, they remained there a long time without concluding any thing; and the officers of the Court who attended them seeing their delay, searched the Jurours if they had any thing about them to eat; upon which search it was sound, that some of them had sign, and others pippins; so which the next day the matter was moved to the Court, and the Aurours were examined upon it upon Oath. And two of them did consess that they had eaten size before

they had agreed of their verdict: and three other of them confessed, That they had Puppins, but did not cat of them, and that they did it where Juross without the knowledge of Will of any of the Parties. And afterwards shall be fined the Court set a fine of five pound upon eath of them which had eaten, for eating beand upon the others who had not eaten forty chillings. And they would sove verdice, advise, if the verdict was good of not, for the Jury found for the Plains not make void and afterwards at another pay, the matter was moved, and Are tiff. And afterwards at another day, the matter was moved, and An-the verdict. derfon was of opinion, That notwithstanding the said Disoemeanoz of the Jury, the verdict was good enough, for these victuals were not given to them by any of the Parties to the action, nor by their means, or procurement. Rhodes thought the contrary, because some of the Jurors had eaten, and some not, contrary if all of them had eaten. See 14 H. had eaten, and tome not, contrary it all of them had eaten. See 14 H. 7.1. A Jury was charged and before their verdict, they did eat and drink, and it was holden that upon that Pilvemeanor, their verdict was void, for which cause a venire facias de novo was awarded. And it was proped by the Counsel of the Defendant West, Chat the said Pilvemeanor so found by examination might be entred of Record, which the Court granted. And afterwards at another day, the matter was moved again. And upon great advice and deliberation, and conference with the other Tunges. The perpit was holden to be and notwithstanding the case. and upon great advice and vellveration, and conterence with the other Judges, The verdict was holden to be god notwithstanding the Historian deficiency as a second as a secon mitted to pillon; but their verdict was good, although the verdict was given against the King.

Hill. 30 Eliz. In the Common Pleas.

#### CLXXXII. Hunt and Gilborns Cafe,

Dower brought by Hunt and his Wife against Gilborn, The Des fendant pleaded, That the Land of which Dower is demanded, is Down of Gatot the nature of Gavelkind, and that the custom is, That in Dower of velkind by Land of such nature The Wife ought to be endowed of the moity of Custom. Such Land, Tenendum quam diu non markata remanserit, & non aliter; upon 1 Cro. 825. which plea in Bar, the Demandants of demur in Law; and the Logd. Anderson was of opinion, That the Customiss strongly pleaded against the Dower in the assirmative with a Megative & non alicer, and that is confessed by the Demurrer, That Dower out of such Land ought to be fo allowed, and to bemanded, and in no other manner. And by Periam, If those words (& non aliter) had not been in the Plea, yet the Demandants hould not have Judgment: For Dower by molety, & non maritatis, is as proper in case of Gavelkind, as Dower of the third part of Land at the Common Law, and as the descent in such case of Lands to all the Song. And afterwards Judgment was given against the Demandants.

#### Hill. 30. Eliz.

CLXXXIII. The Case of the Provost and Scholars of Queens Colledge in Oxford.

The Provost, Fellows, and Scholats of Aueens Colledge in Oxford, are Guardians of the Pospital, or Meason de Dieu in Southampton. And they make a Lease of the Land parcel of the said Pospital to one Hazel for Term of years by the name Præpositus Socii & Scholares Collegii reginalis in Oxonia, Gardianus Hospitalis, &c. And in an Ejectione firmæ upon that sease It was found for the Plaintists; and it was objected in arrest of Judgment. That the word Gardianus, ought to be Gardiani, for the Colledge both consist of many persons, and every person is capable, and it is not like unto Abbot and Covent: But the whole Court was of opinion, that the Exception was not good, but that as well the Lease as also the Declaration was good, sor the Colledge is one body, and as one person: And so it is good enough Gardianus.

Hill. 30 Eliz. In the Common Pleas.

CLXXXIV. Wooden and Hazels Cafe.

Nifi Prips.

Effoin

1 Cro. 367.

Amendment.

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In an Ejectione betwirt Wooden and Hazel they were at issue upon, Not Guilty: and a Venire facias awarded returnable, Tres Trinic. And the Essoin adjudged and adjouned by the Plaintist until Michaelmas Term; And at nert Assies, the Plaintist not withstanding that Essoin, and the adjouning of it procured a Nish Prius, by which it was sound so the Plaintist. And now it was moved in Court so the stay of Judgment, because no Nish Prius ought to issue in Court so the Essoin was adjudged and adjouned until Michaelmas Term by the Plaintist himself. And Leonard custos Brevium said, That the words of the Statute of Westminster 2 cap. 27. Postquam aliquis posueri se in aliquem inquisitionem ad proximum diem allocet. ei esson Imports, That the Essoin shall not be taken at the return of the Process against the Jury, although the Jury be ready at the Bar. Anderson was of opinion, That the awarding of the Nish Prius ut supra, is but a misa-warding of the Process, and then relieved by the Statute. And afterwards the case being moved at another day, the Court was clear of opinion, That no Nish Prius ought to issue soft in this case, because that the Plaintist himself, by the adjouning of the Essoin, cast by the Desendant until Michaelmas Term, had barred himself of all Proceedings in the mean time: But afterwards it was surmised to the Court on the Plaintists part, that he the Desendant was not essoined, so the name of the Desendant is Edward Hazel, and it appeared upon the tryal that Edward Russelwas essoined, but no Edward Hazel, and then it no Essoin, no adjounment, and then the Plaintist is at large, &c. and may proceed, &c. But the Remembrance of the Clark was Edward Hazel, as it ought to be, and yet it was holden of no essea, being in another Term: And afterwards the Countel of the Desendant payed, that the Soli in hac parte, be amended accoping to the Semembrance of the Clark: But the Court utterly denied that, so no Statute gives amendment, but in the affirmance of Judgments, and Alerdias, and not in deseazance of Judg

## Hill. 32 Eliz. Intratur M. 29 & 30. Eliz. Rot. 2116.

CLXXXV. Sir Henry Goodiers Case.

In an Ejectione firms the Case was, Six Ralph Rowlet possessed of certain Lands sozyears made his Will, and ordained Six Nicholas Bacon, neeper of the great Seal of England, Six Robert Catline, Lord Chief Just an Executor-tice of England, Justice Southcote, and Gerrard Attorney General his Exemples of the Case of England, Justice Southcote, and Gerrard Attorney General his Exemples of the Case of England, Inches of En ecutors, and bied. And afterwards the faid perfons named Executors, Owen. 44. fent their Letters to the Chief Officer of the Prerogative Court as Office of Exc. followeth. Whereas our Loving friend Sir Ralph Rowlet Unight, lately cutors. 14. deceased, made and ordained us Executors of his last Mill, and where cas out business is so great, that we cannot attend the execution of the safe the safe that the cannot attend the execution of the safe that the safe that we have thought good to move the bearer here. of 1921. Henry Goodier one of the Co-heirs of the fait Sit Ralph to take upon him the execution of the faid Will. And therefore we pray you to grant Letters of Administration in as ample manner as the justice of the cause both require; and afterwards an Entry was made in this manner in the same Court, Executores Testamenti prædict. executionem inde fuper fe affumere distulerant & adhuc distarent: And upon that the faid Goodier obtained Letters of Administration, and granted a Lease to A for years, of which the said Six Ralph Rowlet died possessed. And afterwards Six Robert Catline claiming as Executor, granted the same Term to another, &c. and all the matter of difficulty was, If this Letter witten by the Executors be a lufficient Kenunciation of the Executorship in Law, to as the Executors cannot afterwards claim or use the faid authority, &c. 2. If the Entry of the said Renuntiation be sufficient and effectual. And it was argued by Ford, one of the Doctors of the Civil Law, Chat as well the Renunciation as the Entry of it is good and fufficient in Law, to that none of the Executors could not after entermeddle. And he law, That in their Law, there is not any certain form of Renuntiation, but if the meaning and intention of the Renouncer appeareth, it is sufficient without any formal Cerms of Renunciatis on: And he put many rules and Maximes in their Law to the same purpole, Ego dico me nolle effe hæredem, are lufficient words to luch intent. Non vult hæres effe quin ad aliam transferre debet hæreditatem. Qui semel repudiavit hæreditatem non potest eam repetere. Quod semel placuit, post displicere non potest. Variatio non permittitur in contractibus. So that after the Executors have fignified to the Officer of their Court their pleasure to renounce the Execution of the Will, they cannot afterwards entermeddle, nam interest reipublicæ ut dominia rerum sint in certa. And as to the Entry of the lato Renunciation inter acta Curiæ, diftulerint et adhuc diftarent, that was the ettoz of the Clark. And itis fule in out Law, veritas rerum gestarum non vitiatur Errore factorum. And the Lord Anderson Demanded of the Said Doctoz, how far those words hæres, et hæreditas did extend in their Law, who answered, Chat hæreditas comprehends all Chattels, as well real as personal, Inheritance as well as Chattels, foz by their Law, Hæreditas nihilaliud est quam successio in universum jusquod defunctus habuit tempore mortis suæ. An dasterwards the Court gave day to the other party to hear an Argument of their live, but the cale was to clear, That no Profestor of the Civil Law would be retained to argue to the contrary. And afterwards Judgment was given, That the faid Renunciation, and the entry of it was lufficient.

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Mich. 30 Eliz. In the Common Pleas.

CLXXXVI. Littleton and Pernes Case.

Debt

Ittleton brought Debt upon an Obligation against Humphry Pernes, who pleaded, that the faid Obligation was endozed with this conbuton, for the performance of certain Articles and Covenants contained in certain Indentuces, by which Indentuces the Plaintiff first cove-nanted, that Edward byother of Humphry should enjoy such Land until the feaft of Michaelmas next following, rendying fuch Rent at the end of the faid Term: and the faid Humphry covenanted, that the faid Edward at the Feast aforelaid thould surrender quietly and peaceably the laid Lands to the Plaintist, and that the laid Plaintist to such of the laid Lands as by the Custom of the Country, tunc jacebant frisca, should have in the mean time free ingress, egress, &c. at his will and pleasure, with his servants, ploughs, &c. And as to that Covenant, the Defendant pleaded, Quod permisit querentem habere intrationem & exitum, &c. in tales terras, quales tunc jacebant fecundum consuetudinem patriæ, &c. And Exception was taken to this plea, because he hath not thewed in certain, which Lands they were which then then did lie freey, according to the custom of the Country; which Anderson allowed of, but Walmsly strongly insisted to the contrary: And he confessed, that where an Act is to be done, according to a Co. benant, he who pleads the performance of it ought to plead it specially; but as our cale is, here is no Act to be done, but a permittance as above-faid, and it is in the Regative, not a diffurbance, in which case permist is a good plea; and then it shall come on the other side on the Plaintiss part, to thew in what Lands the Defendant non permifit: Which differ. ence fee agreed, 17 E. 4. 26. by the whole Court. And fuch was the

1 Co. 127.

opinion of the whole Court in the principal cale.

Another Exception was taken to it, that the Defendant had covenanted, that his dother Edward hould pay to the Plaintist the said Kents To which the Defendant pleaded, that his said brother had payed to the Plaintist before the said Feast of Michaelmas, in full satisfaction of the said Kent, three chillings, and that was holden a good plea; and upon the matter the Covenant well performed, for there is not any Rent in this Case, for here is not any Lease, and therefore not any Rent. For is A covenant with B that C shall have his Land for so many years rendring such a Rent, here is not any Lease, and therefore neither Rent. But if A had covenanted with C himself, it had been otherwise, because it is betwirt the same parties. And if the Lesse covenant to pay his Kent to the Lessor, and he payeth it before the day, the same is not any performance of the Covenant, cause pater, contrary of a sum in gross: Another Covenant was, that the said Humphry solverer expared dicti Edwardi 201. to which the Defendant pleaded, that he had paid exparted dicti Humfridi 201. and that defeat was holden incureable, and therefore the Plaintist had Judgment to recover.

Owen 97.

1 Roll. 847.

1 Cro. 173.

Mich. 30 Eliz. In the Common Pleas.

CLXXXVII. Geslin and Warburtons Case.

1 Cro. 128.

In an Ejectione firmse by Joan Geslin against Hen. Warburton and Sebastian Crispe of Lands in Dickilborough in the Country of Norf. Mich. 30. & 31 Eiz. rot. 333. upon the general Issue, the Jury sound a special verbut, that before the Crespals supposed one Martin Frenze was seised of the Lands,

Lands, of which the Action was blought in tail to him and his Deirs males of his body, to felled luffered a common Recovery to his own ule, Deviles. and afterwards deviled the same in this manner: I give my said Land to Margaret my Calife, until such time as Prudence my Daughter shall accomplish the age of nineteen years, the Aeversion to the said Prudence my Daughter, and to the Peirs of her body Lawfully begotten, upon condition that she the said Prudence shall pay unto my said calife yearly during her life, in recompence of her Dower of and in all my Lands pounds, and if default of payment be made, then I will that my laid colife shall enter and have all my Lands during her life, &c. the Remainder ut supra, the Kemainder to John Frenze in tail, &c. Martin Frenze died, Margaret entred, the said Prudence being within the age of fourteen years; Margaret took to busband one of the Defendants, John Frenze being beit male to the former tail brought a carif of Error upon the said Recordery and assume of the Carift of Error upon the faid Accovery and assigned Erroz, because the Wirit of Entry upon which the Accovery was had, was Precipe quod reddat unum Messuag. and twenty acras prati in Dickelborough, Linford Pamblets, without naming and Town: And thereupon the Judgment was reversed. And it was surther found, that in the faid Wirit of Erroz, and the process upon it, no Hutt. 106. Mitit of Scire facias Ifflued to warn dictam Prudentiam ten. existentem liberi ten. 2 Cro. 574. præmissorum, ad ostendendam quid haberet, vel dicere sciret quare Judicium prædict. 3 Cro. 574.

præmissorum, ad ostendendam quid haberet, vel dicere sciret quare Judicium prædict. 3 Cro. 196.

non reversaretur: The Jury turthet found, that the said Margaret, dependents the said Margaret, dependents the said Martini, reversione inde expectant, dictæ Prudentiæ pro ut lex postulat:

And they surther found, that six pound of the said tembre pounds were error. unpaid to the laid Margaret at the feast, &c. and they found, that the said John Frenze, prætextu Judicii sic reversat. entred into the premises as Deix male, ut supra. And so seised, a fine was seven betweet John Frenze Plaintist, and one Edward Tindal, and the said Prudence his Wise Desoy. Owen 157. ceants, and that was to the use of the faid John Frenze: and that after- Dyer 321. wards Humphry Warburton and the fait Margaret his Wife, broughta i Cro. 471. Altit of Dower against the said John Frenze, Edw. Tindal, and Prudence 719-his Mise, of the said Lands: The said Edward and Prudence made de-fault, and the Demandants counted against the said Frenze, and de-manded against him the mosty of the third part of the said Lands: To which the faid Frenze pleaded, that the default of the faid Edward and Prudence idem John Frenze nomine non debet, quia he fato, that he the fato John was fole feiled of the Lands afozefato at the time of the faid John was fole seised of the Lands aforesaid at the time of the Wirt brought, &c. and pleaded in Bar, and it was found against the said John, and Judgment given for the Demandants of the third part of the whole Land, and seisin accordingly: And that afterwards, 27 Eliz. the said Frenze seved the fine to the said Tindal, to the use of the said Tindal and his peirs: And they found, that after the said feast the said Henry Warburton and Margaret his Wiste came to the Apelluage aforesaid half an hour before Sun-set of the said day, and there did demand the Debt of the said twelve pounds, to the said down. Margaret, by the said Martin Frenze devised to be paid unto them, and there remained till after Sun-set of the said day, demanding the Nent aforesaid, and that neither the said Tindal nor any other was there ready to pay the same. and first it was moved, if the said yearly sum of twelve pounds ap-

pointed to be paid to the faid Margaret were a Rent, of but a fum in grols: And the opinion of the Court was, that it was a Kent, and lost might be fitly collected out of the whole Will, where it is faid, that Prudence his Daughter should have the Land, and that the should pay yearly to Margaret twelve pounds in recompence of her Dowet, &c. But if it be not a Rent, but a fumin groß, it is not much material to the end of the case: for put case it be a Rent, the same not being pleaded in Bar, the Dower is well recovered, and then when de-

fault of payment is made, if the Wife of the Devilor thall have the whole, was the Question: And the Court was clear of opinion, that by the luit and Judgment in the Writ of Dower, the Wife of the Devilor had lost all the benefit which was to come to her by the devile: For the law Rent was deviced to her in recompence of her Dower, for as it was not the meaning of the Devilor that his chief thould have both; And therefore by the Recovery in Dower the had dismissed her felf of the Kent, and by consequence of the benefit of the penalty for not payment of it.

Hill. 30 Eliz. In the Common Pleas.

CLXXXVIII. Stephens Case.

Fines levyed to one A. that in consideration of a Marriage to be had betwirt the Son of the Covenantoz and the Daughter of A. that he befoze such a day would levy a fine, which fine should be to the uses of the Son and Daughter in tail for the Joynture of the Daughter. The fine is levyed accordingly to the uses aforesaid: The father vieth, but in the fine no mention is made of any marriage had: And upon that matter the Court was clear of opinion, that notwithstanding that the marriage was not accomplished, yet the estate tail was well enough executed in the Son and Daughter, sor the fine without any consideration both carry the uses, but without a fine such a consideration would tion both carry theules, but without a fine luch a consideration would not raife such an use without accomplishment of the marriage, for the consideration executed ought to produce the use. But in this case the uses are perfected by the fine, and A. upon the matter might have bad covenant against the father to have the fine before the marriage.

Mich. 30 Eliz. In the Common Pleas.

CLXXXIX. Billford and Foxes Cafe.

Debe.

r Cro. 118.

Billford brought an Action of Debt against Fox and his Wife, Executivity of one A. her former busband, process continued against them that the Exigent, upon which the Dusband appeared, and put in a superfedeas for himself only, without making mention of his Wife, and the case being moved to the Justices, they demanded of the Prothonotaties what was to be done, for the same is practice and a dangerous case for example. And it was answered by the Prothonotaties, that the Court cannot remedy it, for now by the Supesches the Dusband is sine die, for he shall not be driven to answer without his Wife, as this case is, and he is impleaded, as in the right of his Wife, and therefore the is, and he is impleaded, as in the right of his Mife, and therefore the Cliffe thall be waived, and the husband discharged. See the Book of Entries 187. Debt against the husband and Cliffe, and process continued until the Exigent, the husband rendred himself, and the Wise was waive, and Judgment given, quia videbatur Justiciariis hic that the husband absque præsata uxore sua respondere non potuit, & ratoni dissonum sit, ipsum in Curia And so see 43 E. 3. 18. Detinue against the bushand and Chife, the Wife is waive, and the bushand rendered himself at the Exigent. And the point of the Action was upon a ballment to the Wife, dunished himself, and the Bushand rendered himself at the Exigent. And the point of the Action was upon a ballment to the Wife, dunished himself, and the bushand was sine de, so, he could not answer in such case with with the Wife. But at the last the Justices advised thereof, and gave other that the Superfeders hould by saven without recording the annears. other that the Supersedes should by staped without recording the appearance of the Husband. And by Anthrobus one of the Attorneys of the Court, that was the case of the Lady Malory and her Husband, who were

Supersedens by the Husband is not good for the Wife.

were fled in an Action of Debt, and process continued against them till the Erigent, upon which the busband appeared and put in a Superfedeas for himfelf, without speaking of his Wife; and his Superfeders was not allowed, but process continued until Dut lawyp.

Hill. 30 Eliz. In the Common Pleas.

CXC. The Queen against the Bishop of Canterbury and others.

the Queen brought a Quare Impedit against the Archbishop of Can-Quare Impedit. terbury, the Bifhop of Chichefter, and the Incumbent: and counted, that Alburnham was lefted of the Abbowlon, and that he was out law. ed in an Action personal at the suit of such a one, and shewed the whole Dut-lawly certain. And Exception was taken to the Count, because in the setting down of the Dut-lawly, the process is alledged to be returned by the Sheriff, but the name of the Sheriff is not there express fed. As to that, it was agreed by the Court that the truth is, that it is provided by the Statute of 12 E 2. cap. 5. That the Sheriffs in their returns put their names to the said Aeturns; but it is not requisite so to plead it, so the omitting thereof doth not make the Return void, but the Sheriff shall be amerced.

Another matter was objected, for that whereas the Patron had pleaded one plea, and the Incumbent the same plea by himself in Bar. The Aucen demurced in Law in this manner, quoad seperalia placita per dictos, 1 Cro. 140. &c. seperaliter placitat. &c. Dicta Domina Regina necesse non habet, nec per legem Dyer 181,182. terræ tenetur respondere: And the Court was clear of opinion, that the Ange 124.

Demurcer ought to have been several, upon the plea of the Patron by it felf, and upon the plea of the Incumbent by it felf.

Hill. 30 Eliz. In the Common Pleas.

CXCI. Mallet and Ferrers Case.

In Trespass of Battery; the parties were at Issue upon not guilty, Damages in and at the Nisi prius it appeared, that the Chumb of the right hand creased of a or the Plaintiff was clear cut off, and so maimed; And it was found Maimby for the Plaintiff, and damages taxed to forty pounds, and now the the Court. party came in person into Court, and prayed, in respect of the heinous-ness of the Maim, that the Court would encrease the damages; which Dyer 105. damages, upon great consideration had, were made one hundled 1 Cro. 223. ponnos, and Judgment given accordingly. See that the cutting off 544-any of the Fingers is a Maim, 28 E. 3.54. by Stone; and as for the sty. 310,311. damages further affelied by the Court, than the damages taxed by the Jury, See Book of Entries, 46.8 H. 4. 135. 39 E 3. 20.

Hill. 30 Eliz. In the Common Pleas.

CXCII. Atkins and Hales Case.

Richard Atkins of Lincolns-Inn blought a Allrit of Forger of falle Faits as gainst Hale of Gloucester, and counted upon the Forger of an Indensitute, in quo continetur quod quidam Abbas Monasterii de Gloucester Demisse Situm Forger of Manerii de R. & terras dominicales, &c. The Defendant pleaded, Mot guilty, talle fairs And it was given in evidence on the Plaintiffs part, a Leale supposed to be made and fogged; containing that the said About leased the said

Site and all the demesse Lands of the said Hand, exceptis duodus seperalibus clausuris inde, &c. vocat. &c. And it was moved, if this Evidence both not maintain the Issue. And it was holden by the whole Court, that the Evidence was good enough, for it is not necessary to construct terras Dominicales, omnes terras Dominicales, for the Lands not excepted are terræ Dominicales, and so the Count is satisfied by that Evidence, &c.

Hill. 30 Eliz. In the Common Pleas.

CXCIII. Chamberlain and Stauntons Cafe.

Deeds, and fealing of them. Owen 95. Chamberlain brought Debt upon an Obligation against Scaunton, and upon non est factum, the Jury found this special matter, that the Defendant subscribed and sealed the said Obligation, and cast it upon a certain Table, and the Plaintist took it without any other delivery, or any other thing amounting to a delivery. And the Court was clear of opinion, that upon that matter the Jury had found against the Plaintist, and it is not like the case which was here lately adjudged, that the Obligor subscribed and sealed the Obligation, and cast it upon a Table, saying these words, this will serve, the same was held to be a good delivery, for here is a circumstance, the speaking of these words, by which the Islied of the Obligor appeareth, that it shall be his deed.

Hill. 30 Eliz. In the Common Pleas.

CXCIV. Oldfield and Wilmers Case.

Arbitrament. Postea. 304. In Debt upon an Obligation, the Defendant pleaded, that the Obligation was endozed with condition, that the Defendant hould fiand to the Award of I.S. &c. who awarded, that the Defendant hould pay to the Plaintiff at such a day 100 l. of should find two sufficient Sureties to be bound with him to the Plaintiff to pay the said 100 l. to the Plaintiff, by twenty pound a year, until the whole sum be paste: And Pleads surther, that he had performed the said Award. The Plaintiff preplication saith, that the Defendant hath not past unto him the said one hundred pounds, and so in that assigned the breach of the Award, and upon the Replication the Defendant both demur in Law, because by the pretence of the Award, the Defendant had election either to pay the one hundred pounds at the day, of to find two Sureties for the payment of it by twenty pounds per annum, &c. for so is the Award in the disjunctive. But the Court was clear of opinion, that the Replication was good, so although that the Award be set down and conceived in words disjunctive, yet in Law and in substance it is single, for as to the sinding of Suretis the Award is boid, and so nothing is awarded but the payment of the one hundred pounds at the day, to which the Plaintiff in his Aeplication hath fully answered: And Judgment was given so, the Plaintiff.

1 Cro. 4.

Hill. 30 Eliz. In the Common Pleas.

CXCV. The Lord Dudley and Lacyes Cafe.

Andira querela. The Lozd Dudley hrought an Audira querela against Lacy, and upon it a Scire facias against the same party; And at the day it was moved by the Counsel of Lacy, that in as much as no execution was sued against the person of the Lozd upon the Statute Aperchant in which the laid Lozd was bound to the said Lacy, so as he was not in prison, a Scire facias ought not to issue, but a Venire facias. And the Court was clear of opinion.

opinion, That it is at the election of the party grieved, which of them be will fue, feil. a Scire facias, 02 a Venire facias. See 15 E. 4. 5. by Cooke, Scire facias and Venire facias are all one in effect: Another matter was moved on the part of Lacy; That this Audita Querela ought to be sued in the 1 Cro. 203, Chancery and not in the Common Pleas. But the Court was clear 384. of opinion, that the party might sue in which of the Courts he would. See 16 Eliz. Dyer 332. An Audita Querela upon a Statute Perchant viereted to the Justices of the Common Pleas; but upon a Statute Staple, the Suit shall be in the Chancery by Audita Querela directed to the Chancelloz, or by Scire facias Directed to the Sheriff, quod fit in Cancel. laria, &c.

Hill. 30 Eliz. In the Common Pleas.

CXCVI. Askew and the Earl of Lincolns Cafe.

Skew was bound to the Carl of Lincoln in a Statute Staple, the Audita querela, Skew was bound to the Carl of Lincoln in a Statute Staple, the Earl fled execution, by which Askew was put in pisson; and now toe rriends of Askew offered the monp in Court, and cast an Audita Querela for Askew, and prayed he might be batted, and the mony remain in Court till the Audita Querela determined. But the Earl presently demanded the mony to be delibered to him, but the Court denied it, and commanded the Prothonotaries to keep the mony, until the Audita Querela were determined: And let Askew to bail for the costs of suit.

Trin. 31. Eliz. In the Kings Bench!

CXCVII. Ward and Blunts Cafe.

Ward brought an Action of Trover and Conversion against Blunt Trover and of forty loads of Com: as unto twenty loads the Defendant Pleaved not guilty, and as to the residue a special plea, upon which the Plaintiss did demur in Law, and it was adjudged for the Plaintiss, upon which issued a cartie of Enquiry of Damages, which is returned: It was moved, that the Writ of Enquiry of Damages ought not to have issued forth, for the Issued both yet depend untryed, and the Book of 34 H. 6.1. was bouched, and there the case was, that in Crespals against many, one of them made default after a plea pleaded; Now a carrier of Enguiry of Damages shall be awarded, but shall not issue forth Wirit of Enquiry of Damages hall be awarded, but thall not iffue forth until the plea of the others be treed; and if the Mue be treed for the Plaintiff, then the Enquest who tryed the Islue shall assess damages for the whole, and is for the Defendant against the Plaintiff, then the Writ which was awarded to issue forth. See 44 E.3.7. Cook, It is not the discretion of the Court, to award such Writ or not, which Wray granted, but it is much here to grant the Artic presently. Gawdy, The cafe in 39 H. 6. is not like this cafe, for in this cafe the Crefpals is Dibided, and as it were apportioned in twenty loads, and twenty loads, but in the other case not.

Trin. 31 Eliz. Rot. 666.

CXCVIII. Smith and Bustards Case.

Dan Ejectione firms it was found by special verdict, that one s. was letted of Lands, and leafed the fame to F. for 3 i peacs, pelloting and io Co. 129. paying

ing twenty pounds per annum at the font-fione in the Temple Church (the Land it felf lying in Effex) upon the feats of the Annunciation of our Lady and St Michael, og within twelve days after either of the faid

feafts, by even portions, upon condition, that if the laid Bent or any part thereof be unpaid by the laid space of twelve days, Proxime post aliquod festorum vel dierum solutionis inde, that then it should be lawful for the Lessoz to re-enter. T. sassigned his interest to Bustard the Desendant, at Michaelmas the Rent is behind, and the twelsth day after the Lessoz bemanded the Kent at the Temple Church, and so not payment thereof re-entred. Towse, The re-entry of the Lessoz was not lawful, for by the laid Aelervation the Aent was not due until the twelfth day conditions expounded liberalty for the full the confitteed for the full, they shall be construed for the full, they shall be construed for the full, they shall be construed for the party who is to perform it.

To perform it.

To by the late Acceptation the Hent was not due until the tweltty day after Michaelmas, for before that he words (dierum solutions) are greatly material, for conditions are odious in Law, and if the words thereof be doubting party who is to perform it.

The word is the case of 28 H.8.17. If I be bound to you upon condition, to pay to you before the Feast of St. Thomas, the latter feast shall be my day of payment way This Rent is not but until the last day of the timelye days. ment. Wray, This Rent is not due until the last day of the twelve days, for neither debt or diffres lieth for it, then the day of payment mentioned in the condition ought to be the last day of the last twelve days,

Dyer 142.

4 Len. 91.

day of the twelve days.

Trin. 31. Eliz. In the Kings Bench.

CXCIX. Sir George Farmer and Brooks Cafe.

and dict. spatium thall be construed the same number of days, and not the same days. And at last it was resolved and adjudged, that the en-

try of the Leffor was not congeable, but he ought to expect the latter

Prescription. Owen 67. 1 Cro. 203. 8 Co. 125.

n an Action upon the Cafe the Plaintiff declared, that time out of mind, &c. there had been a Manoz called Toccitor, and also there had veen there a Cown called Tocelter, and that all the Beffuages, Lands and Tenements within the fair Cown had been holden of the fair Ba noz, and that he is Lozd of the fato Manoz, and that he, and all those whose estate he bath in the sato Manoz, have used to have a Bake-house, and a Baker, to bake white bread and house bread for all the Inhabitants and Passengers there, which bread hath been of a reasonable Assiste and pice, and sufficient for all the Inhabitants and Passengers there (but doth not say whether hat time out of mind, &c. no person had or used any Bake-house there, but by the appointment of the faid Lord of the Manor for the time being: But that now the Defendant had erected a Bake-houle unto the Nusance of the Plaintist: The Defendanc thewed, that at the time he had set up his Bake-house, there were three Bakers there; and shewed, how that he was Apprentice to the Crade, and that at the time, he letup the laid Bake-houle for the benefit of all persons, as it was lawful for him to do. Morgan, The matter only is, if this prescription made by the Plaintiff be good or not: It is to be considered, if all prescriptions at the Common Law are one, and if all prescriptions be guided by one rule and line: And I conceive, that prescription at the Common Lawis but one: And there are two points in prescriptions, Alage and Acasonableness, but they are not guided by one line, for some prescriptions are against ftrangers, and then there ought to be consideration and recompence: Some prescriptions against privies, as between Lord and Cenant, for there the Cenauce is sufficient, & volenti non sicinjuria. For the sirst, see 5 H.7. 9. where in Trespals the Defendant both justifie, that the place where, is his free-hold, and that he had a foldage, and that he, and all those whose estate he hath, &c. have used, that if any man depasture

his Sheep with the Sheep of the Defendant for the day time, that it was lawful at night to take all the Sheep and put them in his fold all the night, and in the morning to put them out, and the same was holden a good prescription, for which the Plaintiff traversed the prefcription ? And for the other fee 11 H 7.13,14.21 H 7. 40. betwirt Tord and Tenant, that every Tenant for every pound-breach should forfeit three pounds; and fee the Prior of Dunstables cale, 11 H. 6. 19. Br. prescription 98. The Prior declared, that he and his Predecessor time out of mind, &c had had a Market in D. every week one day, and that Butchers and others, who fold victuals, should fell the same in the high freet upon salls of the Prior to them assigned, and that the Prior should have one penny for every sall every day; and shewed, that the Defendant had sold in his house, whereby the Prior had lost the advantage and prosit of his stalls there. And the same was holden a good prescription. And on the other side, the Defendant did prescribe, that he and all house-holders of D had used to sell in their houses. The fame was holden a naughty prescription. See 43 E. 3. 5. and fee also suit ad moliendum, upon prescription without tenure, for peradventure he had not any Apill there before, and now it is an ease to the neighbours: Vide Register 105. where the Wirit is, Cum querens habeat ratione Dominii fui apud R. talem libertatem quod nullus in eadem villa uti debeat seu consuever. Officio, fine Mysterio tinctoris fine licentia ipsius querentis, the same is good by way of prescription, but is vold by way or grant: And there the Defendant is forbid to use the trade of his Dye-house whichin his Panor without his licence, which appeareth upon the With which is in the Register (which Register was made by the Judgment and advise of the grave Judges of the Law) and there is remedy given for the like rale, as in the cale at the Bar. And see F.B. 122. b. Sectam ad furnam, and although such a manner of prescription should bind a stranger, pet here our case is stronger, for the Detendant is our Tenant. And Hill. 15 Eliz. Ros. 166. an express Judgment was given in such case for the Plaintiff. Buckley contrary, although here be a lofs to the Plaintiff, pet there is not a wrong, as the cale in 12 H. 8. 3. If I have an acre of Land adjoyning to your acre, and my acre is drowned, I may make a fluce to carry away the water, and although that by so doing your acre is drowned, yet I shall not be punished for it, because it is sawful for my alm I am a make a trench in my alm I am The the if the ann N. me to make a trench in my own Land, and then if it be any Nufance to you, you may make a trench in your ground, and to carry away the water until it come to a fiver of ditch. See the cale 11 H. 4 of School-masters 200. for it is damnum absque injuria. And it is against the liberty of the Common wealth, that liberty of Contracts be not free but restrain 1 Cro. 112, ro with Priviledges to one only: Vide 22 H. 6. 14. If one erect a Will 113, neer to my Will, no action lieth against him, for it is for the use of the neer to my Hil, no action lieth against him, to it is to the use of the Kings Subjects, and God forbid, that Bread and the baking of it should be restrained to any special person, especially in a Warket Cown. And as to the case of the Prior of Dunstable, that is not to the purpose; for there he prescribed to have a Warket and the correction of it; and the sault there is not in the usurping of a Warket in Nusance of the Plaintiss, but because the Defendant sold meat there secretly, so as the Plaintiss could not have the correction of it. See 22 H. 6. 14. And it is not reasonable, that such wrotes he restrained and Drawn trom the is not reasonable, that such profits be restrained and drawn from the publick good to the private commodity of any person. And he cited a cale which was ruled in the Erchequer 9 Eliz. upon an Information exhibited there by the Burgelles of Southampton, that the King had granted to the Burgeffes of Southam. that all the fweet Wines brought within the Realm hould be unladen at Southam. only: And it was agree Grant of the ed by Wray, that fuch a grant was not good to deprive the Commons King vold. nealth of such a benefit, and to appropriate it to one, which might be Profitable to many: And it was further faid by the Lord Wrav,

that if the King will grant by his Letters Patents, that A.B. wall be of Counted only with the Defendant in the Chancery, and C.B. with the Plaintiffs in the Exchequer Chamber, the same is no good grant, &c.

Trin. 31 Eliz. In the Kings Bench. Intrat. Hill. 31 Rot. 31.

CC. Park against Moss and How.

Trover and Conversion. 1 Cro. 181. More 352. 1 Roll. 893. In an Action upon the Case upon Trover and Conversion. The Defendant pleaded, that one A recovered in Debt against I.P. Executor of E.P. one hundred pounds and twenty pounds in Damages: The Debt of the goods of the Testator, and the Damages of the goods of the Cestator, is que surint, and it not, of the goods of the Executor. Apon which A procured a Fieri facias directed to the Sherist of N. who made his Charrant to the Defendants to execute the said Writ. And before Execution I.P. died intestate, and administration was committed to the Plaintist, and the Defendants afterwards oid execution of the proper goods of I.P. and sold them, and deliver the mony to the Sherist, which is the same Exover and Conversion, and averred that E.P. had no other goods. The Plaintist by Replication said, that the Sherist upon return of the laid Writ of Execution, returned as to the principal Debt, That the goods of the Testator were wasted, and as to the Damages that he could not execute the Writ, quia tarde.

Tanfield, I conceive that the falle return of the Sheriff thall not make the Defendant punishable, for they did execution fecundum exigentiam brevis, and delibered the monies coming thereby to the Sheriff; and if they should not be excused it sould be a great inconvenience, for it is necessary that the Sherist have inferiour Officers under him. As 37 H. 6. an Executor named in the Will, named one to take the goods of the Testator in such a place, who did accordingly, and afterwards the Ex ecutor both refule; pet the fervant chall not be punished for that medling, 13 H. 7. 2. 21 H. 7. 23. Colhere it is said by Read chief Justice, that if the Baily belivereth the body of one who he hath taken in Execution to the Sherist, he shall be excused, although that the Sherist doth not return the Capias; And we have pleaded in this case, that we have delibered the mony to the Sherist, and that is confessed by the demurrer. Altham, I conceive that this Execution after the beath of the party is not good. For an Administrator is another person, wherefore new procels thall tilue against him, as in all cases where the person is changed: 18 E. 3. If one sueth a Certificate out of a Statute, and before execution had he dieth, his Executors shall not have execution upon that Fertificate, but first they ought to have a Scire facias: And 28 H. 8. Dyer 29. Cranscript of a fine is removed by the Ancestoz out of the Creafury into the Chancery, and comes in by Mittimus to have execution, and the Ancestor dieth before Execution; Now the Beir cannot proceed without a new Miximus, for he is another person. See 36 H. 8. Br. Statute Aperchant 43. and in our case here, at the time of the Execution these are not the goods of the Executor, for he is not in esse, and it ought to appear whose goods they are which are taken in Execution: It Lands be recovered against the Father who dieth, and the weir be ousted by Execution, without a Scire sacias against the weir, he shall have an Assie. And 6 E. 6. Dyer 76. is our case. A is condemned in Debt, and a Fieri facias is awarded, and before execution A. Dieth inteffate: the Sheriff levyed the Debt upon the goods of the Intestate in the bands of the Administrators; upon which the Administrators brought Error and reverted the Erecution. Tanfield, The Erecution is erronious, but is not void, but shall stand until it be reverled by Error. And it was holden by the whole Court, that the false return of the Sperist should not presiduce the Defendants: At another day it was moved again, and it was holden, that the averment, that the goods put in

Execution were the good of the Tellator the day of the Witt of Erecution fued, was a good averment without faying, The day of Erecu. Execution ation done, for the award of the writ of Erecution that bind all his gainft an Adgods against whom the Judgment was given which he had at the day of after the the Carit of Execution awarded. And it was also holden, That notwith death of the flanding the death of the party against whom, &c. The Sherist might Intestate of do execution of the goods of the dead in the hands of his Executors, the Intestates according to the opinion of Bryan. 16 H.7.6. and afterwards in the pain-goods; good. cipal Cafe Judgment was given against the Plaintiff.

Trin. 31. Eliz. In the Kings Bench.

CCI. Carie and Denis Case.

relate to the date of the Writ. 3 Cra. 106,330 1 Roll. 893.

The Case was; Apon a Latitat, the Sheriff returned, That by ver Retorn of the true of the said process he had arrested the Body of the Defendant, Sheriff. and that such a day after, and before the Return of the Latitat, a Habeas Corpus came to him to bying the body immediately into the Chancery, which was done accordingly, and there the Prisoner was discharged by the Order of the said Court: And the same was holden a good Keturn, for the Sherist is bound to obey the Kings Writs, and to erestute them, and he cannot compel the party to put in Sureties to appear here: And the truth was, That the party was brought before the confer of the Rolls, and he his discharge him. apatter of the Rolls, and he bid bilcharge him. And per Curiam, the fame is no offence in the Court; but it was an ill act of the Maffer of the Rolls: for we oftentimes have perfons here upon Habeas Corpus who are also arrested by Process out of the Exchequer, or of the Common Pleas, but we will not vischarge them before they have found Sureties for their appearance, ec. and fo the faid Courts use to do reciprocally: and we cannot punish the Sherist, so, the Hedas Corpus was sirst returnable before the Latitar, but the party may have an action against the Sherist, but we will speak with the Haster of the Kolls, &c. and afterwards Baill was put in. But afterwards another Exception was taken to the Return: soil a custodia nostra exoneratus suit, which might be intended as to the Cause in the Chancery only, and not for the Cause have for he hath not alledged, that he hath not alledged, that he hath not alledged, what he here, for he hath not alledged, that he bath not alledged, Chat he was committed to any other in cultody, and for that cause day was given to the Sheriff to amend his Return.

Trin. 31. Eliz. In the Kings Bench.

CCII. Upton and Wells Cafe.

IR an Ejectione firmæ by Upton against Wells, Judgment was given foz the Plaintist, and upon the habere facias possessionem, The Sherist re-tuned that in the Execution of the said Wit he took the Plaintist with him, and came to the house recovered, and removed thereout a woman, and two children, which were all the persons which upon distgent fearch, becould find in the faid house, and delivered to the Plaintiff peaceable possession to his thinking, and afterwards departed, and immediately after three other persons which were secretly lodged in the said house expulsed the Plaintist again: upon notice of which he returned again to the said house to put the Plaintist in full possession, Latch. 165. but the other vid refill him, to as without peril of his life, and of them that were with him in company he could not do it. And upon this seturn the Court awarded a new Wirit of execution, for that the same was no Execution of the first Writ, and also awarded an Attachment against the parties.

Trin. 31 Eliz. In the Kings Bench.

CCIII. Marsh and Astreys Case.

1 Gro. 175.

Arth brought an Action upon the Cafe against Aftrey, and beclar. Led, That he had procured a Writ of Entry fur diffeifin anatist one A and thereupon had a summons for Lands in London, and velivered the fair Summons to Aftrey being Under Sheriff of the fame County; virtute cujus, the faid Aftrey fummoned the faid A. upon the Land, but notwithstanding that bid not return the faid Summons. Aftrey pleaded Not guilty; And it was treed in London, where the action was brought for the Plaintiff; and it was moved by Cook in arrest of Judgment, That here is a militrial, for this tilue ought tobe tryed in the County where the Land is, because that the caute is local; but the Exception was not allowed, for the action is well layed in London, and to the trial there also is good. Another Exception was moved because the action ought to be against the Sherist himself, and not against the Cinversherist, for the Sherist is the Officer to the Court, and all Aeturns are in his Mame; and I grant that an action to any fallity or deceit lyeth against the Under Sheriff, as for embesselling, rasing of Writs, &c. but upon Non feasans, as the Case is here, the not Retorn of the Summons, it ought to be brought against the Sherist himself. See 41 E.3.12. And if the Under-Sherist take one in Execution, and unsereth him to escape, bebt lycth against the Sheriff himself. Another Ex. ception was taken because the Declaration is that the said Astrey Intendens & machinans ipsum querent. in actione sua prædict. prosequend. impedire,&c. did not retorn the said Summons, but doth not say, tunc exist. Underscherses. Sherist. Snag, contrary, If a Baily Errant of the Sherist, take one in Execution, and he suffer him to escape, an action lieth against the Bally himself. And that was agreed in the Case of a Bally of Middlefex, and Sir Richard Dyer Sheriff of Huntington, and his Ander She riff, wholustered a Prisoner toescape, the action was brought against the Under-Sheriff; so it may be the Sheriff himself had not notice of the matter, because the Ultit was delivered to the Under-Sheriff, and he took a fee for it, and therefore it is reason that he shall be punifed. As if a Clerk in an Office milenter any thing, he himfelf fall be punished, and not the Naster of the Office, because he takes a fee for it. But if the Retorn made by the Baily be insufficient, Then the Sherist himself shall be amerced; but in the puncipal case it is clear, That the action lieth against the Ander-Sherist if the party will, and fuch was the opinion of Gawdy and Clench: As to the other matter, because it is not alledged in the Declaration, That the Defendant was Under Sheriff at the time, the Declaration is good enough not-withflanding that, for so are all the Presidents, and if the Defendant were not Under Sheriff the same shall come in of the other side. See 21 E. 4.23. And afterwards in the principal Calc, Judgment was given for the Plaintiff.

Trin. 31 Eliz. In the Common Pleas.

CCIV. Hedd and Chaloners Cafe.

In an Ejectione firmæ by Hedd against Chaloner upon a Demile for years i Cro. 176. of Jane Berd, It was found by especial Clerout, That William Berd mas 2 Roll-42.176. leifed in fee, a made a feotiment to the use of himself for life, a afterward to the use of his two Daughters Joan & Alice in fee, and died, and Joan en-

Trial.

tred into the Land, and by Indenture by the name of Jane Berd, feafed the lame to the Plaintiff for three years. And it was further found; That Joan intended in the Feafment, and Janewho leafed, are one and the lame person. Wray, It has been agreed here upon good addice and Conference with Grammarians, that Joan and Jane are but one Maine. And Momen because (Joan) feems to them a homely name, would not be called Joan but Jane i But admit that they were several Maines, Then he and Gawdy were of opinion, it flouid not be good: But afterwards, it was faid by Gawdy, Chat this action is not grounded meetly upon the Indenture, but upon the Demise, and that is the subsance, and the Indenture is but to enforce it, is the leafe, 44 E 342. Another matter was moved here, the remainder was limited to Joan and Alice in fee, by busickthey are Joint Cemains, and then when one of them enters, the same bests the possession in them both. Ohen by the Dennie of Joan a movery paseth only to the Plaintist. Wray, Pere the Certa is incurred, and the Plaintist is to recover damages only, and no ticle at all is found so the Plaintist is to recover damages only, and no ticle at all is found so the Plaintist is to recover damages only, and no ticle at all is found so the Plaintist is to Plaintist and there was substituted but that Rudgment sould be given so the Plaintist and there was substituted but that

## Trin. 31. Eliz. In the Kings Bench.

OCV. Read and Names Cafe.

In an action of Trespass by Read and his Alife against Nish, to the tring into a house called the Davy-house; upon that guitey pleaded, who carry found this special matter, Sie Richard Gresham kinight, was seited in Fee of the Mannours of Lands. and of diverte other Lands mentioned in his Alis, the Remainder to the same to Sie Thomas Gresham his Bon so life, the Remainder to the session of the said Sie Thomas Gresham in tail, the Remainder to the session for, &c. the Key mainder to the typical son, &c. The Key mainder to Michael son, &c. the Key mainder to the typical son, &c. The key mainder to Michael son, &c. the Key mainder to the typical son, &c. whereby the premises cannot crimain, describe and come, in the sou as was appointed by the land Asis, otherwise than so Johntures so any of their Edites so her life only of leases son, at the suffice than so Johntures so any of their Edites so her life only of leases son, at the suffice than so Johntures so any of their Edites so her life only of leases so, at her with the suffice than so Johntures so and select his estate. Michael Land, und, Marie, leased to Bellingsord son and their her work years, rendring the any times Bent. And afterwards a Eliz, he leaved a since of the land Mannours and of all his Lands, and of Eliz, he have a Johnture to his write to the use of himself, and his Allise so their tives, and afterwards to the use of himself, and his Allise so their tives, and afterwards to the use of himself, and his Allise so their tives, and afterwards to the use of himself, and his Allise so their tives, and afterwards to the use of himself, and his Allise so their tives, and afterwards to the use of himself, and his Allise so their tives, and afterwards to the use of himself, and his Allise so the tives, and afterwards to the use of himself, and his Allise so the state of pears, of Ionture, and that upon implication of the Little at Lease so years and that upon implication of the Cality, which dugles to be taken e construed according to the intent of the p

that the order of his Inheritance thould be preferbed, pet to make a

Provision for Jointute; and it is great reason and cause to his family to enable and make them capable of great Watches, which should be a strengthning to his posterity, which could not be without great Jointures, wherefore I conceive it reasonable to construe it so, That here they have power to make Jointures for their Wives. It hath been faid, That no grant can be taken by implication, as 12 E. 3. Tic. Avow. 77. Land was given to I and A his wife, and to the heirs of the body of I begotten and if I & A. Dy without heir of their bodies, betwirt them begotten, that then it remain to the right beirs of I. and it was holden that the fecond clause did not give an estate tail to the wife, by implication being in agrant, but otherwife it is in Cafe of a bebife, as 13 H.7.17. (and there is no difference ) as some concerbe ( when the devise is to the heir, and when to a stranger) but these cases concern matter of Intereff, but our cale concerns an Authority: And admit that Sir Thomas hath power and authority to make this leafe, Then we are to confiber if the Jointure be good, for if it be, Then being made before the Leafe, it challtake effect before, and the woman Jointress is found to be alive. But I conceive, Chat this Jointure is boid, and then the Leafe shall stand, for an use cannot rise out of a power, but may rife out of an effate of the Ceffator, and out of his Will, 19 H.6. A man deviceth, That his Erecutois Mall fell his reversion, and they fell by Word, it is a good Sale, for now the Revertion paffeth by the Will. But an use cannot be raised out of an use, and a man cannot bargain, and sell Land to another use than of the Bargainee. And it is like unto the case of 10 E 4, 5. The diffeisee both release unto the diffeisor rending frent, the render is boid, for a rent cannot iffue out of a right, fo an use cannot be out of a Release by the differee, for such release to fuch purpose shall not enure as an Entry and Feoffment: Also bere after that conveyance Sir Thomas hath built and erected a Dew house. and no new Sent is referved upon it, and therefore here it is not the ancient Bent, for part of the fum is going out of the new house. But antient Kent, to pact of the luftices, do not freak to that, for it appears that the Kent is well enough reserved. Another matter was inobed for that, That a year before the Expiration of the Lease made to Billington, this Lease was made to Rod for 21 years to begin presently from the date of it; although by the same authority he cannot make Leases in Revertion, for then he might charge the Inheritance in infair. tum. But pet luch a Leale as bere is be might make well enough. for this Leafe is to begin prefently, and to no charge to him in the Revernon, as in the Cale betwirt fox and Colliers, upon the Statute of 1 Ele. A Bishop makes a Lease for three pears before the Expiration of a former Lease, to begin presently. It was holden a good Lease to bind the Successor, sor the Inheritance of the Bishop is not charged above one and twenty pears in toto. But if a Bishop make a Lease for years, and afterwards makes a Lease for three lives, the same is not good, 8 Eliz. Dy. 246. Cenant in tail leaseth to begin at Michaelmas next ensuring for the entry pears, it is a good Lease by the Statute of 22 H & So filing, for twenty years, it is a good Leafe by the Statute of 32 H. 8. fo is a leafe for 10 pears, and afcer for eleven years, and pet the statutes are in the Negative, but this power in our Caie is in the Affirmative; and the Inheritance is not charged in the whole with more than one and twenty years,

Use cannot rise out of a power.

Trin. 31 Eliz. In the Kings Bench.

CCVI. Kinnersly and Smarts Cafe.

Deet upon a minious Contract.

2 Cro. 1552

Mebt upon a Bond, The Plaintiff declared, That the Bond was made in London; The Defendant pleaded, That an utirious Con-

tract was made betwirt the parties at D. in Stafford-shire, & that the Obligation was made for the same contract. The Plaintist by Replication sath, that the Bond was made bona side, & non projustra, and that Issue was tryed in the County of Stafford , and was found for the Blaintiff: and it was moved in arrest of Judgment, that that Afue ought to be tryed in London, where the contract was made. Gawdy conceived, that the tryal is well, As 8 E. 3.8. In debt upon an Obligation in London, the Defendant pleaded, that the Digation was made by duresseat York, the same Issue shall be tryed at York. At another day the case was put more certain, soil that the contract was made at W. in Stafford-shire, by which it was agreed, that for a Porle and two Cut of Aron, the Plaintiff thould have for them and the forbearing of the mony for such a small time fifty pounds, whereas in truth they were but of the value of forty pounds, and that the said Bond was made for the payment of the said fifty pounds. Cook, The Islue is well tryed, for the ground of Tryal. the matter is the ulurious contract, and those of Stafford-fhire may better know it than they of London. And according to this Crysl it bath been before adjudged. H. 18. Eliz rot. 209. Betwirt Sybthorpe and Turner. and P.31, Eliz. rot. 303. betwirt Payne and Wilkenson, where the Iffue was, abique hoc, that it was a corrupt agreement, but the pleading was, ut fupra. And afterwards Judgment was given for the Plaintiff.

Trin. 36 Eliz. In the Kings Bench.

CCVII. The Queen and Buckberds Cafe.

Be Queen recovered againff Buckberd in a Quare Impedir, and there Quare Impedir. upon a Wirit of Erroz was brought, and it was affigned for et. 1 Cro. 162. that the Queen, post tempus sensite, had Judgment to recover damines for the Queen, post tempus sensites, had Judgment to recover damines for the unus adjudged, 7 Eliz. 236. See also 34 H. 6.51. And these damages are not as damages, but as a penalty institute upon the disturbance. See Book of Entries, 483. The King in a Quare Impedia bissistance. See Book of Entries, 403. The king in a Quare Impedic counted to his damage of forty pounds, and 484 1000 is and although, rompus semestre transserit, yet the King shall recover damages, but the value of the Church for half a pear, for the King at all times map present in his own right; for nullum tempus occurrit Regi. At another day it was moved by Fenner Serseant, and he concessed, that here the Ausen Damages in a signed to recover damages, for she both not present in her own right, where by king, for the Incumbent had two Benefices without Qualifications, a there is a contractive for the first mass had and the Laple encurrence and therefore the Ausen. for the Incumbent had two Benefices without Qualifications, ethere, & e contraforethe first was void, and the Laple encurred, and therefore the Ausen
did present in the right of the Crown, and so is not verus Parronns in E.3.

Cure impedic 54. The King shall not recover damages, although he
count of damages, 3 H.6. Damages 17. And as to the take of 7 Ehz it
doth not appear there, that the king did present by reason of his Pierogative, a he shewed divers Presidents, that the king shall not recover damages in such case. P.7.H.5.roc.402 z H.6.roc. 3 16. For the Statute
was intended to give damages to the very Patron, and not otherwise.
Cook, Where the King presents by Laple he is very Patronus had vice, as
Viantee of the next Audidance: Vide T.E.1. Quare Impedic 18 t. The King
recovered damages in the case of a Prior. Godfrey said, he had searches
the Rest of T.E.2 and there is more reported in the Book than is in
the Rest, for Judgment is given sor the Presence, but as sor the Contra would addice of it. Gawdy. It is clear, that the Chiern
shall not recover double damages, sor she cannot sole her present where only
ment, quia nullum tempos occurrit, and because to quod tempos single damasenches mansierit, but she shall have single damages, sor the manages, sor the ramages, sor the recover double damages and because to give not single damasenches mansierit, but she shall have single damages. gruen

niven forthe wrong and diffurbance, and not for the prefentment; and therefore the damages are well awarded. Wray, If the King be not within one part of the Statute (as it is agreed as to the double damages) it is bard that he be within the other wanth.

Popham Attorney general, The Queen ought to recover damages,

but only single damages, but not double damages; and the words of the Statute are general, therefore the Queen hall have the benefit of it, and of all Statutes made for the benefit of the Subjects, the king finil take advantage: The Statute of Gloucester gives bamages in a Mit of Cosnage, Aid and Besil, and the King brings an Action upon the setting of his Anceffors, he thall recover bamages, and in conficuction of Otatutes, the opinions of them which were next to the making of them is to be much respected: Vide 19 E.2. Rot. 90, 19 E.1. Rot. 255, 231,136.

And always the sking counts to his damage, &c. and that should be in vain, if he should not recover damages: And as to the Presidents shewed to the contrary, that was the default of those Clerks which the King had pielented; and when in a QuareImpedit the King had perhailed they contented themselves with the Incumbency without regard of the damages: But if damages be not to be given, yet the Judgment to recover the presentment is not erronsous. And the Judgment only as to the giving of Damages hall be reverled, and the Defendant in the Quare Impedit here thall not affign the fame for Error, because no Damiages are given, for it is for his advantage. And always where it is found for the Queen in a Quare Impedit, they enquire of the value of the Church, which should be a trivolous thing, if the Queen should not recover damages. Gawdy, Of things transitorie the Queen map be dif-turbed, and if the be, wherefore thall the not recover damages? but the boubt is, if the intent of the Statute be, if the party thall have fingle damages in any case: And here in this case the Judgment is only and entire, and if it be reversed in part it shall be reversed in the mode; as in Ower, the Cenant pleads, that he is always ready, so the Demandant shall have Judgment to recover her Dower, and wit hall iffue forth to enquire of the damages. And fee alfo 17 E.3. In an Affize of Darrein presentment, the Plaintist had Judgment to have a their to the Bishop: And the Asse was taken after for the namages: And in the mean time the Defendant brought a Wift of Error, and it was holden maintainable, for they are several Judgments; but it is not so here, for the Entry is, Quod querens habeat bre. Episcopo, & quia rescitur que damna, &c. for it is one Judgment.

Wray, It is but one Statute, and therefore it shall be construct with one construction, and it should be a Grange construction that the Island.

Ving, It is but one deatute, and therefore it thall be construct with one construction, and it hould be a strange construction, that the king should be within one part of the Scatte, and out of the other. And 14 H.6.3. The Kings Attomey could not have damages, which is a streat proof and authority, that the Judgment for damages in such case is Treat proof and authority, that the Judgment for damages in such case is The same to us, and from the time of E.3. until how, no damages shade been given in such case. There would not give damages, 34 H.6. there the Councel learned of the king, could not have damages for the king. And 7 Eliz there was no damages: Ind whereas it pash been such, that a man shall not have a Aleit of Error, where Judgment is given for dis benefit, that it Judgment be entred that the Reisnoant by in Missicordia, where it ought to be, Capaiur, pet the Desendant shall have a Aleit of Error. And he conceived also, that here is but one Judgment: Cleach. The first Dischent after the making of that Statute look, that damages were given so the king in such case; but of termacos the warries was always otherwise, a chat the same first the could not be construct, to give in such case hamages, a the reason was because the Justices took the Lasa to be otherwise: And the Lasa to be otherwise: And the lasa Statute could not be construct took the Lasa to be otherwise: And the Lasa to be otherwise: And the lasa the lasa the could not be constructed took the Lasa to be otherwise: And the lasa the lasa the could not be such the same because the Justices took the Lasa to be otherwise: And the lasa the lasa the could not be such the same because the Justices took the Lasa to be otherwise: And the lasa th

5 Co. 58.

A man fhall not affign for error, that which is for his advantage. is not within the Statute of 32 H. 8. of buying of Cythes, not any Subjects who buy any title of him: And here in our case, the Queen is not verus Patronus but hath this presentment, by Precognitive: And if title no accrue to the Bishop to present for Laple, yet the Patron is verus Patronus.

At another day the case was moved, and it was said by VVray, that he had conferred with Anderson, Manwood, and Periam, who beld, that the Queen could not have damages in this cale, but Periam somewhat doubted of it. Gawdy, In 22 E. 4 46. In Dower the Demandant recovered her Dower, and damages by verdice, and afterwards for the damages the Judgment was reverted, and flood for the Lands. Clench, It that be reverted for all, for there is but one Judgment. And afterwards Judgment was given, and that the Queen hould have a Writ to the Bishop and damages. Popham, The Court ought not to proceed to the examination of the Etrozs, without a Petition to the Queen, and that was the case of one Mordant, where an Infant levyed a Fine to the Queen, and thereupon brought a Write Etroz, and afterwards by the Ausen, and thereupon brought a Write Etroz, and afterwards by the Resolution of all the Judges, the proceedings thereupon were flaged. See 10 H.4. 148. a good cafe.

Trin. 31 Eliz. In the Kings Bench.

CCVIII. Chapman and Hursts Cafe.

Etwirt Chapman and Hurft, the Defendant of libel in the Spiritual Court, for Cythes against the Plaintiff, who came and surmifed, Tythes, D Court, for Tythes against the Plaintist, who came and surmised, that whereas he held certain Lands by the Lease of Six Ralph Sadler for term of years within such a Parish, that the now Defendant being Farmor of the Nextory there: The Defendant, in consideration that the Plaintist promised and agreed to pay to the Defendant ten pounds per annum, during the Term, for his Tythes, he promised, that the Plaintist should hold his said Land without Tythes, and without any sute for the same, and thereupon prayed a Prohibition: And by Gawdy; the same is a good discharge of the Tythes for the time, and a good Composition to have a Prohibition upon; and it is not like unto a Covenant. See 8 E. 4. 14. by Danby.

Trin. 31 Eliz. In the Common Pleas.

CCIX. Kirdler and Leversages Case.

D Abowy the case was, that A seised of Lands leased the same at Avour, Mill, rendzing rent ten pounds per annum, and afterwards granted 1 Cro. 245. eundem redditum, by another deed to a stranger for life, and afterwards the lease at will is determined. Periam was of opinion, that the Kent did continue; and although that the words be, eundem redditum, petitis not to be intended, eundem numero, sed eundem specie, so as he shall have fuch a Rent, scil ten pounds per annum: As where the king grants to suth a Town, cassemillertates quas Civitas Chester habet, it signs be intended such Liberties, and not the same Liberties, so in the principal case: Also he held, that a Rent at will cannot be granted for life, and therefore it shall not be meant the same Rent: But it was afterwards adjudged, that he Rent at will cannot be between the same same it was afterwards adjudged, that the Rent was well granted for the life of the Syantee.

#### Trin. 31 Eliz. In the Common Pleas.

CCX. Heaves and Alleyns Cafe.

Cui in vita. 1 Cro. 234. Poph. 13.

Demand, and the manner of it, in a writ.

Eaves brought a fur cui in vita against Alleyn. And the cale was this, The Discontinuee of a Melluage, had other Lands of good and indefetible title adjoining to it, and demolifit and abated the faid houle, and built another which was larger, to as part of it extended upon his own Land, to which he had good title. And afterwards the heir brought a fur cui in vire, and demanded the house by the Name of a Message, whereas part of the house did extend into the Land to which he had no right. And by Periam, The Writ ought to be of a Defluage with an Exception of to much of the house which was exceed upon the foil of the Tenant, as demand of a Desluage except a Chamber: And it was argued by Yelverton, Chat the Mrit ought to abate, for if the Demandant shall have Judgment according to his Mrit, then it shall be entred quod petens recuperet Melluagium, which should be Erronious, for it appeareth by the verdict it felf, that the demandant hath not title to part of it; and therefore he ought to have demanded it specially 5 H.7. 9. parcel of Land, containing 10 feet. 16 E. 3. Br. Mortdanc. of a piece of Land containing to much in breadth, and to much in length. And the movette of two parts of a Defluage, and 33 E.3. br. Entrie 8. a Diffettoz of a Darth ground made Ageadow of it; Ilow in a Carit of Entry it thall be bemanded for Deadow. Drue Serjeant contrary, and he confessed the Cales put before, and that every thing shall be demanded by Writ in such fort, as it is at the time of the action brought: as a Cirit of Dower is brought of two Mils, whereas during the Coverture they were but 2 Cofts; but at the day of the Wirt brought, Wills; and therefore thall be demanded by the name of Mils, 14 H.4-33. Dowor 21.13 H.433.175.1 H.5.11. Walmelly, part of a Meuage may be demanded by the Kame of a Messuage: and if a bouse descend to two Coparceners, if they make partition that one of them shall have the upper Chamber, and the other the lower, here if they be disseised, they thall have several Assistes, and each of them shall make his plaint of a Dessuage; and by him a Chamber may be demanded by the name of a house. And afterwards the Witt was awarded good, but a special Indoment was given, it quod querens recuperet Meffuagium prædict. viz. fo many feet in length, and to many in bleadth, according to that which was found by the Aerdia.

Trin. 31 Eliz. In the Common Pleas.

CCXI. Degory and Roes Case.

Debt.

Degory brought Debt upon an Obligation against Roe, as heir to his Ancestor, The defendant pleaded, That his Ancestor by his deed do covenant with Six W. Winter, and A. Marsh, to stand settled to the use of himself for life, and afterwards to the use of the Defendant and his heirs, and so he had nothing by descent. The Plaintist replicando said, non convenit; and it was found by special verdix That such a deed of Todenant was made by the Ancestor of the Desendant, but the six sus sus sus sus deed, to the use of the last he delivered the same to I.S. as his deed, to the use of the said Six W. VVinter, and the said Marsh, if the said Six W. VVinter would agree to the same, and take the charge of it upon him, and if he will not agree, That then it should not be his deed, and surther

further found, That Sir W. Winter died befoze any agreement; and it was moved by Periam, If the same be presently the Deed of the Ancestoz, or if it do not take essent ill the condition be performed, so until Sir W. Winter hath agreed to it. See 14 H. 8. 17, 18, 19, 20, 23. And by Walmely, The same is not the Deed of the Ancestor until Sir William hath Deeds, when agreed; But by Anderson and Periam, although Sir William Winter doth to take essen not agree to it, pet it is the deed of Roe; for although a deed be upon condition, ut supra, pet because he delivered it as his deed, and the Condition is subsequent to it, It shall be taken so his deed, and the Condition after shall be void, because repugnant: For although that she estates similar to men, the estate may be precedent, and the condition subsequent, the not performance of the condition may destroy the estates is always subject to the condition, yet it is not so in Deeds, for being once the deed of the party, it can never cease to be his deed, after it is once delivered as his deed. Owen, Although the same be the deed of the party, yet it is not well pleaded, to stand seised unto the use of himself so, the Covenant is pleaded, to stand seised unto the use of himself so, the Remainder over: To which the Plaintist Replicando saith, non convent, so as the Issue is, if any such Deed of Covenant was, and the Jury sind, Chat the Tovenant was to stand seised to the use of himself, and his wife, &c. so as it is not such a Deed as the Desendant hath pleaded, so other estates are limitted by it, and therefore it shall not be intended the same Deed. Periam, The same is not material, so the substance of the Plea is, Nothing by descent, &c. and it was adjourned.

Trin. 31 Eliz. In the Common Pleas.

CCXII. The Scholars of All-fouls in Oxford, and Tamworths Cafe.

In a Writ of Aight by the Colledge of All-fouls in Oxford against writ of Right Tamworth: the Writ was, Quod clamat tenere de nobis in liberam puran i Cro. 232. et perpetuam Elemosinam. And exeception was taken to it, because it ought to be in liberam Elemosinam, sans pura & perpetua, also it ought to be Elemosina, with a Double e, and not Elemosina, with a single e, but the exception was not allowed. For as to the first Exception, it is but surplussinge, and as to the other, It is the common course. Another exception was taken to the Writ, because the words are quod clamat essentiatem suam, without saping in jure Collegii. Anderson, The Writ is good enough. If a Parson plead that he is seised, he shall say in jure Ecclese, so he hath two capacities, and without such words here shall be intended seised in his own Right: But if an Abbot plead that he was seised, there needs not such words, so he hath no other capacity; so of Dean and Chapter, Mayor and Communalty: And afterwards, the writ was awarded good, and that the Tenant should answer over, &c. See Book Entries 236, 237. It was also moved, If the Colledge shall count of its seism within 30 years, because that the Corporation never dies, and then if he count of its own possession, the same is without similation. And it was holden, that if the Guardian of the Colledge which now is, was ever seised, he ought to count upon a seism within thirty years; But upon the seism of his Predecesso he ought to count of a seism within 60 years as another common person; so the change of the Teste of such a seism, is as the dying seised, and descent of a common person.

#### Trin. 31 Eliz. In Communi Banco.

CCXIII. The Lord Buckhurst and the Bishop of Winchesters Case.

Quare Impedit. The Lozd Buckhurst bydught a Quare Impedit against the Bishop of Winc. and counted, that he was seised of the Hang of D. to which the Advowson was appendent, and that the said Church became boid, and that he presented Maurice Sackvil his Clark. The Defendant pleaded, that he was seised of the said Advowson, as in gross, and presented one Maurice Sackvil, absque hoc, that the Advowson was appendent. It was moved, that the Defendant ought to traverse the Presentment, and not the Appendancy, especially as the cause is here, where they both present one and the same person. To which it was said, that that noth not appear, so the Defendant hath pleaded, that he presented Maurice Sackvil, but doth not say, prædick. Maurice Sackvil, so as it may be he is not the same person, but another. See 10 H.7.27. The Craverse is well taken; contrary where the Plaintist declares of an Advowsom in gross, and that he to the same presented, and the Defendant pleadeth, that he is seised of such a Manarto which the Advowsom is appendant, &c. without that, that the Advowsom is in gross, there he shall traverse the presentment, so the presentment shall make it in gross. See 13 H.8. 12.

Trin. 32 Eliz. In the Common Pleas.

CCXIV. Jennings and Winches Cafe.

Affumplit.

Is an Action upon the Case by Jennings against Winch. The Plaintist vectored upon an Assumplit by the Defendant, 1 Maii. 32. Eliz. and counted upon a Motoarus for twenty shillings, and an Indebicatus for four pounds. The Defendant pleaded, that he being endebted to the Plaintist in sive pounds, and W.S. in another sive pounds, they became bounden to the Plaintist in twenty pounds for the payment of ten pounds in satisfaction of the satisfaction of sive pounds, and sive pounds, and that the Obligation was seased before the day of the Assumplit supposed, and added, that the same is the same debt, and that the Obligation was made for the same debt. And by the opinion of the whole Court, the same cannot be a good plea, for an Obligation cannot decaying a Contract of an Assumplit afterwards made. And the truth of the matter was, that the Obligation was made after the Assumplit, although that the Plaintist declared of an Assumplit made after. And in that cale it was holden, that the Defendant might plead the special matter; that the Obligation was made after the said Assumplit, absque hoc, that he Assumplit, &c.

Trin. 32 Eliz. In the Common Pleas.

CCXV. Hawkins and Lawfe Cafe.

A. for Kent referved upon a Leafe for years made to the Testatop. The Desendant pleaded, fully administred, and upon the Evidence it appeared, that the laid A. made the Desendant his Executor, and that

that he did meddle with the possession of divers goods of the Testaor, and to administred, and afterwards ruled in Court; and that the Administration was afterwards committee to one B. and that the Inventory of the goods of the Testator came to one thousand pounds: and it was given in Evidence for the Desendant, that he himself had paid certain debts, and that divers persons have recovered against the Administrator divers sums of money amounting to one thousand pounds, & ulra; And it was moded, if that evidence did maintain the Islue for the Defendant, because that the Defendant had pleaded, plene administravic, which implies an Administration by himself. And now upon the Evidence it appeareth, that the greatest part of the goods of the Cestator were administrator by the Administrator.

Periam, If that Administrator (who in truth is but a stranger) pay

Periam, If that Administrato? (who in truth is but a stranger) pay any vehts with the goods of the Testato? without commandment of the Executor, the same is not an Administration, and the Executor administration. cannot give such matter in Evidence, to prove his plea of fully administration nistred. Drew Serjeant, If an Executor of his own wrong, meddle 3 cro. 62, 63. with the goods of the Testator, and afterwards the Administrator meddle with the residue and administrator, if he can prove that he himself hath administred part, and the Administrator the Residue, the same is good Evidence to maintain his Issue. Periam, It may be so there, but here in our case, the Defendant is the very Executor, and be hath administred, in which case afterwards he cannot refuse; and so the Administration is not well committed, and is granted without the Administration is not well committed, and is granted without cause; and he to whom the Administration is committed is a meer firanger, and what he did was without warrant; and therefore it is no Administration to prove the Issue : And then the whole matter by direction of the Court was found by special verbia. And by Periam, in this case an Action may be thought, either against the Executor of his own wrong, or the Administrator, but not against both of them joyntly. See 21 H. 6.8. by Yelverton and Portington. Periam, If the Cestator mortgages a Lease sor years and dyes, and the Executors redeem it with their own monyes, the said Lease shall be Asset in their hands, for to much as the same is worth, above the sum which they have paid forthe revemption of it.

Trin. 32 Eliz. In the Common Pleas.

CCXVI. Ivory and Fryes Cafe.

Twas ruled by the whole Court in this cale: That if A. make B his Erecutor, and B. makes C his Erecutor and vieth, and a Debt is due to A. the first Cestator. If C. bring an Action of Debt for the said Debt, as Erecutor to B. the Witt shall abate: It was moved, if an Infant within the age of one and twenty years be made Erecutor, and additionally the same than additional to the same than the same ministration is committed, durante minore etate, it whose name the Action thall be brought, in the name of the Infant, or the Administrator. Periam, If the all be proved before the Administration be committed, the Action thall be brought in the name of the Infant Executor.

Trin. 32 Eliz. In the Common Pleas.

CCXVII. Read and Johnsons Case:

Man Action upon the Cafe betwirt Read and Johnson, the Plaintiff de Assumption. clared that where the Defendant was endebted to him, he assumed 1 Cro. 242.

to pay it: And upon Non Assumpte pleaded, this special matter was found, that the Plainting seed unto the Defendant certain Lands for years, rending tent eight bounds per annum, and that the said Aent was behind for three years, and that the Defendant was not otherwiseendebted to the Plaintist, nor made any other promise but the contract upon the Reservation of the Kent: And by the clear opinion of the whole Court, the Action doth not spe, because he hath a proper Action, still an Action of Debt, in which no wager of Law spech.

Trin. 32 Eliz. In the Common Pleas

CCXVIII. Wright and the Bishop of Norwiches Case.

Quare Impedit. In a Quare Impedit betwirt Wright and the Bishop of Norwich, it was moved, if the king hath title to prefent for Laple, and prefents; and his Clerk is admitted and instituted, but not inducted, and dyeth before Induction; If now the King shall present for the said Laple, he cause the Church was not full against the King. And the Justices were all clear of opinion, that the King might repeal such presentment before induction: And as to the principal matter, he Court seemen to inchins, that the King might present again.

Mich. 30 & 31 Eliz. In the Common Pleas. Intrat. Trin. 30 Eliz. Rot. 1160,

CCXIX. Whiskon and Cleytons Cafe.

Devifes.

Poft. 283.

The an Ejectione firme, upon a special verdict found, the case was this, That C was feised in fee, and devised the same to Solomon Whiskon his God-son after the death of his Willet; and if he fail, then he willed ail his part to the discretion of his father, and vied; Solomon survived, the father being dead before without any disposition of the Land. Gawdy was of opinion, that upon those words, that the father had a free simple, as, I will that my Lands shall be at the disposition of 1. S. by these words, I.S. bath a free simple, quod Periam concessis; and they a mount to as much as, I will my Land to I.S. to give and sell at his pleature: And by Windham and Periam, there is no difference where the Device is, that I. S. thall do with the Land at his discretion, and the pepile thereof to I. S. to do with it at his discretion.

CCXX. Mich. 31 Eliz. In the Common Pleas.

leafed to B. for years, and before the expiration of the faid Term A lealed to B. for years, and before the expiration of the laid Term the nest Lesee committed Mast. A. brought an Action of Colastagainst the second Lessee, and declared upon a Lease made so, years without speaking of the Indenture. And Gawdy Serieant demanded the opinion of the Court, if the Desendant might safely plead no Mant? And they conceived, that it should be dangerous so to do. Then it was demanded, if the Desendant plead, that the Plaintist had nothing rempore dimissions, whereof he had counted, if the Plaintist might estop the Desendant by the Indenture, although he had not counted upon it, and if such Aeplication be not a departure. And it seemed to Periam, and Leonard, Custos drevium, that it was not, so it is not contrary to the Declaration, but rather dothersome the Declaration. And the contract of the contra

Convertion

## CCXXI. Mich. 31 Eliz. In the Common Pleas.

Walmesley Serjeant vemanded the opinion of the Court upon this matter. Land is given to bushand and Wife in special tail (during the Cousture) they have issue, the bushand is attained of Treason and vieth, the Wife continues in as Cenant in tail, the issue is restozed by Parliament, and made inheritable to his Father, saving unto the King all advantages which were devalued unto him by the Attainder of his Father, the Wife dieth. And he conceived, that the issue was inheritable, so the Attainder which disturbed the inheritance is removed, and the blood is restozed; and nothing can accrue to the king, for the Father had not any estate softeitable, but all the estate did survive to the Wise, hot impeachable by the said Attainder. And when the Wise, hot impeachable by the faid Attainder. And when the Wise, then is the Mue capable to enherit the estate tail. Windham and Rhodes, prima said, thought the contrary, yet they agreed, that if the Wise had suffered a common Accovery, the One had bound the King.

CCXXII. Mich. 31 Eliz. In the Common Pleas. 4 11

In an Action upon the Cale the Plaintiff declared, that he had deli-Adumptic, bered to the Defendant, diversa bona advalentiam is to the Defendant in consideration thereof did promise to pay to the Plaintiff the Debt owing, pro bonis prædictis, and did not them, that the Defendant bought the said goods of the Plaintiff, and so it both not appear that there was any Debt; and then a promise to pay it, is meetly boid, which was agreed by the whole Court.

Mich. 31 Eliz. In the Common Pleas.

CCXXIII. Seaman and Brownings Cafe.

Corpe Seaman brought Debt upon a Bond against W. Browning and others, Executors of one Marshal; the condition was, that where the safe Marshal had solvertain Lands to the Plaintistist the said Plaintist tist peaceably and quietly enjoy the said Lands against the said Marshal, see, and assigned the breach in this, that the said Marshal had entred upon him, and cut down sive Elms there, upon which the parties were at issue; And it was found, that A serbant of the said Marshal, by commandment of his said Haster, had entred and cut, see. In the presence of his said Haster, and by his commandment, so he is a principal Crespasso; And it was so holden by the Court.

CCXXIV. Mich. 31 Eliz. In the Common Pleas.

If the kings Cenant by knights service vieth, his Peir within age, and upon Office found the king sesseth the Body and Land, yet the Beir during the possession of the king may sell the Lands by Deed enrolled, or make a Lease of such Land, and the same half bind the Deir notwithstanding the possession of the king; but if he maketh a feostment in fee, it is utterly void, for the same is an incression upon the possession of the king; but where the king by Office found is entituled to the Inheritance, as that his Cenant dieth without Deir, whereas it is salle, sor which the king seiseth, in such case the Cenant of the king, before his Ouster le mayne, cannot make a Lease tor

pears, of fell the Land by Deed enrolled: The Case depended in London before the Judges of the Sheriffs Court. The King, by colour of a false Office, which both falsty entitle him to the Inheritance, is seised of certain Land; he who hath right, leased the same for years by Deed indented; and then an Ouster le mayne was sued, and he enteoffed a stranger; And it was holden, that the Lease should not bind the Fedsee, although it was by Deed indented, for the Fedsee is a stranger to the Andenture, and therefore shall not be enopped by it. 18 H. 6. 22 A stranger shall not take advantage of an Choppel, and therefore shall not be bound by it: As if one take a Lease for years by Indenture of his own Lands, the same shall bind him, but it he dieth without Deir, it shall not bind the Lord in point of Cicheat.

Mich. 31 Eliz. In the Common Pleas.

CCXXV. Gibbs Cafe.

Trover and Convertion. 1 Cro. 861. Owen. 17.

10 63 361 . DECEO.

Thos brought an Action upon the Cale upon Trover and Conber-Dogle, and fold the fame unto the Defendant in open Barket, by the name of Lifter, and the fait falle name was entred in the Coll-book. And it was bolden clear by the Court, that by that late the property was not altered.

CCXXVI. Mich. 31 Eliz. In the Common Pleas.

Owen. 45. Hutton, 105. 1 Cro. 734. Post. 322.

Enant in Socage leased his Lands for four years, and died, his Heir within the age of eight years, the Mother being Quardianin Socage, lealed the Land by Indenture to the lame Leffee forfourteen years; It was holden by the Court, that in this Cale the first lease is surrendzed, but otherwise upon a Lease made by Guardian by Murture.

Mich. 31 Eliz. In the Common Pleas.

CCXXVII. Kimpton and Dawbenets Case.

In Trespals, the Defendant did justifie by a grant of the Land. where, &c. by Copy: The Plaintist by Replication laith, that the Land is customary Land (ut supra) and claimed the same by a former Copy: The Defendant by Rejounder laith, that well and true it is, that the Lord may grant Copies in possession at his pleasure, and also effates by Copy in Revertion, with the affent of the Copy-holder in estates by Copy in Reversion, with the assent of the Copy-holder in possession, but all estates granted by Copy in Aeversion without such essent, have been void. It was argued, that this custom is not god, for it is not reason, that the Lord in disposing of the customary possessions of his Manor should be deen upon the will of his Cenant at will, and the same is not like to the case of Attornment, for there the Attendancy is to be respited, which is not to be done here, for the Copy-holder in possession shall continue attendant to his Lord, not with anding such a grant in Reversion: And see for the unreasonableness of the custom, 19 Eliz 357. In Dyer, Sallfords Case: It was moved on the other side, that the Custom was good enough; and 3 H. 6. 45. was vouched, Chatevery freehold of a Manour upon alienation might surrender his Land. Ac. It was adjourned. his Land, Ec. It was adjourned.

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# Mich. 30, & 31 Eliz. In the Exchequer-chamber.

CCXXVIII Marriot and Pascalls Case in a Writ of Breen.

Robert Marriot one of the Attorneys of the Court of Exchange, Missosmer of brought an Ejectione sirms against Many, Paleal, and upon Not gaints? Corposition, pleaded, the Jury sound a special clerbia, containing this matter; 10 Co. 123. viv. Chat king H.7. the sourth year of his meign exceed and sugment an Dolpital, by the name of the Datter and Chaplains of the Doctof pital of King Henry the eighth, do le Savoy: And after bards in the time:

of Queen Mary, the said about and Chaplains being seised, &c. lead see the same to the Defendant by the name of W. Molgil abouter of the Dolpital, Henrici nuper Regis Anglise septimi vocate Savoy & Capellant His spitalis predict. And afterwards by the source name (which was surface the their very name) leafed the fame to Thomas Fanthaws who teafed the fame to the Plaintiff: And if the Leafe aforelate made unto the Destendant in Torm and by the name aforelate, be a good Reale, was all the question. And this matter was argued, and many times debated in the Exchequer, as well at the Bench as at the Bar. And it was agreed by Clerk and Gent, Barons there, Chat the faid Acade made to the Defendant was utterly void by realon of the Disnotmer. Manwood argued frongly to the contrary; and Judinent was given for the Plaintiff, according to the opinions of the fact two Bacons: Chord which the Defendant brought a Carit of Error in the Exthequer chamber before the Lord Chancellor, Areafurer, &c. And now this Term it was argued by Godfrey on the part of the Defendant: Chree vari ances have been supposed in this Lease from the Original Poundation of the Polpital in the name of it. 1. The name of the coundationis the Waster of the Polpital, &c. Et Capellani dict. Hospitii; So that in the Lease rests part of the name (Capellani) as not immediately annered to Halter, as it is in the name of the Foundation. But as to that point, the Justices Allisants delibered Godfrey from the arguing of it, as of a dariance not material: Another dariance hath been objected, because that in the Foundation the words are Hospitalis Regis H. 7.2 and in the Lease the words are, Hospitalis Henrici septimi auper Regis Anglish foas this word (Nuper) is Surplulage, and ex abundant. But of that matter be was also discharged, because it is no variance in substances But all the difficulty reaed in this, that in the Foundation the words are (de le Savoy) and in the Leafe (vocat. le Savoy) and he put the Cale 4 Mar. Dyer 150. The Colledge of Eaton was incorporated by the name of Prepositi & Collegii regalis S. Mariæ de Eaton juxta Windsor, and a Lease is made by the name Prepositi & Sociorum Collegii regalis de Eaton, and that was holden a void Leafe: And I confess that in the names of Corporations, we ought to relost to the foundation of the Cosposations, for the name of a Cosposation is as a name of Baptilm, a ought to be as precisely observed, but that ought to be intended in matter of substances t not otherwife, vide to Eliz. Dyer 278. The Dean & Chapter of Carlile was incorporated by the name of Decanus & Capital. Eccleliz Cathedralis Sanct. & individuz Tri. Carl. and they make a Leale by the name, Decanus Ecclefiz Cathedralis S. Trin. in Cant. er totum Capit. de Ecclefia przedich. And the same was holden a good Lease, notwithstanding that bariance, which is not in libstance of the name. And the Dean and Chapter of Peterborow was incorporated by the name of Decanus et Capitul. Ecclefix Petriburgenfis, and they made a Leafe by the name Decanus et Capitulum Ecclesise de Peterborow, and holden good enough, because the variance was not in any matter of substance: And he cited the Case betwirt Crost and Howel, 20 Eliz. Plow. Com. 537. The Cooks of London were incorporated by the name of Matters, and Governors,

and Commonalty of the Missery of Cooks, and they by the Name of Baster and Wardens of the said Craft and Vistery of Cooks made a Conveyance, and it was holden that the variance affigued in the abundance of this word (Craft) in the Conveyance, which was not in this Copposation, was not any material variance, but only matter of furplulage, for (Craft) and (Mystery) are all one, and of one sense, &c. And so in the principal Case, The Hospital de le Savoy, and the Hospital vocat. le Savoy, sound the same, and in effect do not differ. And as it was faid by the Lord Chief Baron in his Argument in the Court of Exchequer, in this case, four things are only to be respected in the Mame of Post. 162, 164. a Corporation: Pirst the Name of the living persons who are the Corporation, as in our Case the Baster and Chaplains: Secondly, the house in which they are resident, and make their aboad: Thirdly, The Name of the Founder: Fourthly, the place upon which the place of their aboad is built and erected. And if thefe four matters are ful ficiently let down, although not formally, it is good enough. It hath been objected, Chat the Hospital de le Savoy, and the Hospital vocat. le Savoy, do much differ, for de le Savoy, implieth the demonstration of the Place, but vocat. le Savoy, trencheth only to the Name, as if the Dean & Chap.de Pauls in London, make a Teafe by the Mame of Dean and Chay. of St. Paul vocat. London, to if the Mafter and Fellows of Trinity Colledge; in Cambridge make a Leale by the Mame of Master & fellows of Trinky Coll. vocat. Cambridge, such Leales are utterly voto. I or well agree those Cases, for the Dean and Chapter is not all London, but part of London, and therefore cannot be called or fait London; and to Trinity Collegge is but part of Cambridge, and therefore cannot be called Cambridge; but bere in our case, The hospital is not parcel of the Savoy, but the whole Savoy is the Polpital, and there is not any part of the Savoy, which is not the Polpital; But if Tricity Colledge in Cambridge make a Leafe by the Mame of Mafter and fellows Collegii vocat. Trinity Collegge in Cambridge, it is a good Leafe: And he put a difference, where the word in the Name of the Corporation, which precedes (de) is all one and of the same Nature with the word which follows (de) and where on the contrary, as in our case, The word which precedes (de) is Pospital, and the words which follow (de) are le Savoy, are all one and the same thing, so as the pospital and Savoy are all one and the same, and therefore may be well called Le Savoy, and also (de) and (vocat.) in confirmation are the same, & so our Leale is good enough: And it is found by verdict, Chat this Pospital was erected upon the Manoz of Savoy, and thereupon it is now commonly called Le Savoy, without any avdition of Pospital, for as it was called Savoy before it was erected into an Dolpital, fo it is also called after the Erection; and true it is that the milinaming of a Copposation in any small thing shall abate a Wit, for there is only belay, pet it is not of force in a Conveyance, unless the milinaming ve in a point material. Coke to the contrary, The var riance from the true Mame of a Copposation which thall prejudice a Conveyance ought to be in matter of fubftance, fog variance in matter of form and circumstance will not hurt it, sed parum different que re concordant. And first it is to be confessed, Chat the Name of a Copporation is as the Name of Baptism, which admits of no variance, and therefore it is faid 38 E 3.15. by Kniver, when a Man founds a Chantry ora boule, ec. it ought to bear fuch a Rame as his founder bathgiven to it, for that is its proper name. And fo it bath been Reported by Bendloes, Setjeant, 4 and 5 Phi. and Mar. Chat it was holden for a politive Law, by all the Judges of England, Chat the miliaking of the Name of a Copposation in any matter of Substance, makes the Conveyance ut. terly boid, for a name is given to a Corporation upon the foundation. and that by the same Dame they hall implead and be impleaded, but that ut idem nomen, et sub codem nomine sint habiles ad perquirend. & concedend. to be impleaded, and to implead, but that is to be meant idem re, for

it is not necessary, that it be idem litera, for, qui haret in litera haret in Cortice, but if it be idem re with the foundation it is well enough. And therefore it hath been adjudged, That where the Colledge is incorporated by the Name of Maffers and Fellows Collegiist. & individ. Trin. in Canta-brig. and they make a Leafe by the Name of Collegii Trin. this is grown enough, for the word Trinity, implies, and imports St. & individ. And therefore such variance was holden not material. But here in our rafe is a variance in Substance, betwirt the Pame given to the Polpital upon the foundation, and the name ulurped in the Leale. And the same will clearly appear upon mp argument, viz. If the Rame given to this Pospital upon the foundation of it, and the Rame usurped in the Leale be not unumin sensu (not in your private unberstanding as private persons, but in your proicial knowledge upon the Becord quod coram vobis relidet, as Judges of Accord) then this leafe is boid; for although you as private persons, otherwise than by Record, know, That the pospital of Savoy, and the pospital vocat le Savoy, are all one Pospital; you ought not upon that your private knowledge to give. Judgment, unless also your pudicial knowledge agree with it; that is, the knowledge which is out of the Records which you have before you: But if the Pame given upon the foundation, and the ulurped Pame be not idemiensu in your Judicial knowledge; and you cannot otherwise conceive the Identity of these two Pospitals, not make any Construction to imagine it but by the Accord, for the Accord is your eye of Juffice, and you have no other eye to look unto the cause depending before you, but the Necord; and to this purpole he cited the cale of 7 H.4.108. Where a man killed another in the prefence of a Judge traveling on the way where the murther was, And at the next Affiles in the laid County before the same Judge, another man is indicted of the fame murder, and arraigned, and convicted by verdict; In that cale, The Judge be ought not to carry himself according to his private knowledge, whichhe bath of the fato fact, ici. to acquit the Pationer, but all that he can do is to respite Judgment against the party, because of the Judges knowing to the contrary, and to make further Relation thereof to the King for his Pardon of grace for the Party. So in our Case, It may be that you in your private knowledge know, That the Hospital de le Savoy, and the Pospital vocat. le Savoy, is all one, but that both not appear unto you upon the Record which is before pout but it may be for any thing that appears in the Record, that they are diverte and several Pospitals; Therefore the Lease is boid. To prove my Minor, I do say that this word (de) as here, de Savoy, designes a place, to as by this Colord (de) the place is become parcel of the Pame, but this word vocat. locum non denotat, but only the very name, and to here is a material difference and variance, for here by pretence of the Pame in this Leafe, there is not any place of the Corporation in the Pame, but the Corporation is transitory, which cannot be, for a Corporation especial consisting of many persons, as Corpus aggregatum ought to have a certain place of their abiding, or otherwise it cannot be discerned by the Law, and it is but a Mathematical thing, and nothing else but a fixion, and they cannot be otherwise considered in Law, but as they are circumscripti within the bounds of their house, and they cannot appear but by Attorney: and if a Prebend confid upon a Manoz, a afterwards the Aganoz by Cclrit be demanded against the Pzebend, and he lose it, here he hath lost his Name, because he bath lost that which giveth to him his Name, by Contrary by Blake, soz his estate and place in the Chapter, both remain unto him: And is confly, soz another Cause here is a material variance, for this word (de) apposeth a place before the foundation, as the placeupon which the holpital was erected was talled Le Savoy before the. Creation of it; but these words (vocat. le Savoy) supposeth the same Rame Savoy was imposed upon the foundation. Chiroly, these words (de le Savoy) do import the Pospital

pospital to be part of the place, which before the Foundation, was called Savoy, but vocat. trencheth only to all the place called Savoy: Fourths ly, (de le Savoy) is matter of certainty and verity, (vocat.) but matter of Reputation. And to for these four reasons, great difference in substance appeareth betwirt the very name of the Polpital, and the Mame ulurped in the Leafe. And he cited the Cafe 29 Eliz. in the Kings Bench betwirt Hall and Wingat. King E. 4. did incorporate the Dean and Cannons of Windfor, by the Mame of Dean and Cannons of the King and Queens free Chappel of Saint George the Wartyz within his Caffle of Windsor; and made a Lease by another Mame, viz. by the Mame of Dean and Cannons of the King and Queens free Chappel there, and the same Lease was made in the time of Ausen Mary, and it was holden that the same was a variance in Substance. And he cited another Case 30 Eliz. In the Kings Bench betwirt Fisher and Boys. A Colledge in Oxford was by Act of Parliament incorporated by the Mame of Warbent and Scholars, Domus sive Collegii Scholarium de Merton in universitate Oxonia, and they make a Leafe by the Mame Custos Domus five Collegii de Merton in Oxonia, and Scholares ejuldum Domus, and the variance intlat point, because in the very name of the foundation, Domus five Collegii Scholarium de Merton, and in the usurped Mame in the Lease Domus five Collegii de Merton, was holden material, and the true name was de Merton in universitate Oxoniæ, but in the Lease, in Oxonia only, leaving out the word Aniversity, and the same was holden a variance in substance: For Oxford both contain in it felf the University, which is a thing of it felf, and also the City is a thing by it felf and it may be that there is a Colledge in the City called Merton Colledge, and also a Colledge which is called by fuch Dame in the Univertity: and fo in our Cafe, it may be that there is an pospital which is called the Savoy, and also another which is Le Savoy, and then the Court shall be enveigled, &c. And in the end of the Argument, the Lozd Treasurer, which was the Lozd Burleigh, put this Case, which was adjudged in his time. The Guild of Boston in Lincolnshire, was incorporated by the Mame of the Guild of St. Nicholas, and our Lady the Airgin Mary, &c. and they made a Aeale for years by the Dame of the Guild of our Lady the Airgin, and St. Nicholas, Religione quadam motus ut nomen Virginis Mariæ, in charta dimissionis, proponere-tur nomini Sancti Nicholai; and it was adjudged a void Lease tog the bariance afozefaid. And afterwards at another day, the matter was at gued by Ackinson, on the part of the Defendant. Starkey 21 E4.56. faith, That the Mame of the Corporation, by which it is incorporated, is as properly the Mame of a Corporation, as the Mame of Baptilm is the Mame of a lingle and individual person, and yet there is a great disference in the milprision of them, for the Manne of Baptism both confift of one word, and therefore it cannot admit of any variance, but the name of a Copposation both confift of many words: in which case vatiance in words which are supplyed by other words, and not in matter of substance shall not hurt; and that hearing is notably discussed in the case of the Cooks of London, cited before by Godfrey. Four things are to be confidered in the Name of a Corporation, which are of the Effence and Substance of it: First, the persons incorporated, of which the Corporation both confift, as here the Master and Chaplains de Savoy. Secondly, The quality of the Copposation, as Dean and Chapter, Mayor and
Commonaty: Thirdly, the Patron of Founder, as, Merton Colledge;
Fourthly, The Place whereupon the Copposation is founded. As to
this last name. this last point, fee 31 E. 3. 28. and fo. 15 by Knivet; and fee 6 Eliz. Dyer. Eting H. 8. erected the Dean and Prebend of Chefter, by these words, scil. Decanus et Capit. Cathedralis Ecclesiæ Christi, et Sanctæ Mariæ Virginis Cestriæ. And afterwards by Letters Patents, gave to the said Dean and Chapter, certain Manogs, Decano et Capitulo Ecclesia Cathedralis Christi et Sanctæ Mariæ Virginis, by us besoge erected, and

that grant was holden vold, because that the place where, &c. is not expressed in the said Letters Patents, for Cestria is the local place of the Incorporation. And as to the Objection made upon the word (& that this word (de) goeth only to part, and (vocat.) goes to the whole, and so here is a great difference; the same is not any reason, so this word (de) extends as well to the whole asto part. As a Rent granted percipiend, de Manerio de D. the same shall go to the whole Mannon, 5 E. 4, 5. ad respondendum I. Abbati Monasterii Sanctæ Mariæ Ebor. where the Obstigation was, Abbati Monasterii Sancæ Mariæ Virginis extra Muros Ebor. and pet the Wirit was well enough, notwithstanding such variance, a fortiori, in the case of a conveyance and Interest. And I conceive that it appeareth in the Record, Chat the Lease given in evidence of the part of the Desendant, is a Lease made by the Master and Chaplains of of the Detendant, is a near made by the modifier and Chaptains of the holpital of the Savoy, for it is found by herbit. That King Henrythe eighth, upon the Site of the Manour of Savoy, betwirt the house of the Bishop of Worcester, and the house of the Bishop of Carlise, and that it was incorporated by the Rame, &c. and that afterwards Q. Mary by her Letters Patents, reciting the foundation of the said Polyital called the Savoy, and lamenting the Ruin of it, being surrended in the time of E. 6. Did restore it, by which it appeareth, that the Polyital of the Savoy and lamenting the Savoy is one and the same in restore of the Savoy, and Polyital called the Savoy is one and the same in respect of the Bounds, foundation, and Situation. And in the whole course of our Books, no case can be found. That any Copposations have avoided their own acts, by such cause of Milnolmer, not of such matter, is any question moved in our Books. And as to that which bath been objected, That although the Judges in their private knowledge well know, That the Poule delesavoy, and the Poule vocat the Savoy, be all one, yet they ought not to judge according to luch their private knowledge, but according to their judicial knowledge, which they have out of the Aecord. I conceive, Chat the Judges of necessity ought to use in such cases their pibate knowledge; as where Milnolmer of a Colledge was objected, viz. Trinity Colledge in Cambridge, where it was incorporated by the Mame of Hafters, Fellows, and Scholars Collegi Sanctæ & individuæ Tria. and they made a Leale by the Name of Master, Fellows, and Scholars of the Colledge of Trinity, the same was holden a good Lease, for the Indges knew well enough, Chat this word Trinity both imply in it felf ancta & individua, but by what knowledge? not by their judicial knowledge, but by their private knowledge; So in our cale. Egerton the Queens Sollicitor to the contrary: It is a clear and plain Aulein our Law, That the name of a Corporation is as a name of Baptism to a natural man, and if there be any difference, I conceive, that the Law requires more first certainty in the name of a Corporation than in the Dame of any particular perlon, for a name is more necessary to a Copporation than to another, for when an infant is born, he is prefently a perfect creature, before any name given him, and the giving of the Pame is not a matter of necessity, but of policy for distinction, &c. but in the case of a Corporation, The Mame is the substance and essence of it, and it is not a Body before a Mame be imposed upon it, and there. fore in the Charters of Corporations there is always such a clause, per tale nomen implacitare, & implacitari, acquirere, &c. possing and without their Rame, they are but a Trunk: but contrary in the case of particular persons; Land is given primogenito filio J. S. It is a good gift, although there be no Pame of Baptism: Lands given omnibus filiis J. S. is a good name of purchase, and if a man be bound in an obligation by a wrong of falle Pame, and in an action brought upon the same, if it appeareth upon evidence, that he was the same person which seated and delivered it, the same is sufficient, and the Bond shall bind bim. But contrary in the case of a Copposation, and we cannot give any thing to a Corporation by circumstances, inducing or implyAnte. 161,162.

ing their true name. As Land given to the first Pospital which the Queen thall found, although that it sufficiently appear, Chat such a one was the Pospital which the Queen first founded, pet the gift is void: And he benied, That the four things remembred before are necessarily required in the Pame of a Copposation: for if the Queen will found a Copposation, as an holpital by the Rame of Utopia, the same is well enough without any respect of persons, place, founder, &c. set forth in the Charter. And also other things belides the said four things are Cometimes necessary in a Copposation; As if the Queen will found an Dolpital by the Pame, Quod fundavimus ad roga. Christ. Hatton Cancel. Anglia. all the same ought to be expressed in every grant made by or to the last Domital; So Quod fundavimus ad relevandum pauperes; and fometimes the number of the persons incorporated, if it be in the Charter, it ought to be used in all acts made by of to them; As Maffer and fir Chaplains; to as the fair four things recited before, are not to necessary in the Name of a Corporation, but to far forth as they are parcel of the Name given to them in the Charter of the Corporation: And in our case, 1. The place de le Savoy, is part of their name, set down in the Charter of their Corporation, and therefore the fame ought to be precisely followed. And he relyed much upon the argument of Cook in noting material variances betwirt de le Savoy, and vocat. le Savoy, as (de) signifies part (vocat.) the whole; (de) signifies the place de facto, vocat. implyes reputation only. There is a place near unto Whitehal called Scotland, because that the Kings of Scotland, when they came to our Parliament used there to relide, as the Lord Trealurer affirmed. There is also a place in England called Normandy, and another called Callais, and also a place here in Westminster called Jerusalem, but these, Scotland, &c. but by Reputation, so as what difference is betwirt the very Scotland and Scotland here, &c. fuch and fo much difference is there betwirt the hospital de le Savoy, and the Hospital vocat. the Savoy. And as to that which hath been objected by Atkinson, That that word (de) signifies as well the whole as part, as a Kent granted percipiend de Manerio de D. I confess that this word (de) hath many significations, so that we ought not only to consider what (de) signifyes of it self, but rather to observe what goes be foze, what follows; foz, as faith Hillary, intelligentia verborum ex causa dicendi fumenda eft. And this word (de) is a material word in the Pame of a man, therefore also in the name of a Corporation, 26 H.6.31. Affice by I.de S. and it was found for him, and afterwards the Tenant in the Affile brought attaint, and in the reherfal of the Affile in the wit of attaint he was named I. S. leaving out (de) and for that cause the Carit viv abate, 28 E 3.92. Debt brought by the Trecutor of John Holbech, where the Term tament was John de Holbech, and for want of this word (de) in the wit, it was abated by Award. And in a Præcipe quod reddat agrafast Mich. de Triage, he cast a Protection for Michael Triage, leaving out (de) and for such variance the Protection was visallowed, and a Petit cape awarded. And although the Judges in their private knowledge know well e nough, Chat the pospital de le Savoy, and the pospital vocat the Savoy, be all one, yet in point of Judgment they ought not otherwise receive information, but out of the Record, and therefore, if lufficient matter be not within the Aecozd to inform the Judges of the Identity of the faid two Holpitals, their private knowledge shall not avail. And he cited the cause of the Lord Conniers, where the Parties being at issue, and the Jury charged for the trial of it; It was found by special ver-Dict, That a fine was levyed of the Lands in Question, &c. but nothing found of the Proclamations, whereas in truth, the Proclamations were as well given in evidence as the fine, But found, Quod finis levatus fuit prout per recordum finis ipsius, in evidenciis osten um, plenius apparet, Now in that case, although that the Justices, knew well enough, That the Proclamations were expressly given in evidence, yet because

cause it did not appear unto them as Judges out of the Record, They would not give Judgment, according to the truth of matter, but according to the Record, for they cannot take notice if the Proclamations bein the Chicographers Office of not: But after it appeared unto them, That that defeat was but a flip of the Clerk, they commanded the Necozo to be brought before them, and the Proclamation to be inferted in the verdict; and then gave Judgment according to the verdict reformed as aforefaid. And as to the Cafe of Marcin Colledge cited before, he faid he was of Councel in it, and he knew, That the Judgment there was not given for the cause allevged by Cook, but because that this word, Scholars, was left out in the Lease. And he held, that if in the principal Tale, the Lease had been, That the Master and Chaplains of the house called the Pospital of the Savoy, &c. it had been well enough, for there is, de le Savoy. See a good case 36 H. 6. siz. Brief. 485. by Danby a Corporation cannot be Tenants of Lands, but accorping to their Tarnovation, and their foundation, and their here Manne. bing to their Corporation, and their foundation, and their very Mame, not they cannot be impleaded, not take Lands by a wrong Mame, not purchate, not dispose of their possessions, but by their true Mame. And afterwards the matter was compounded by the mediation of friends: and Fanshaw had the Lease for a certain sum of monp. See now Cook to Report, The Case of the Bayor and Burgestes of Lyn Regis: See allo Cook 11. Report. 18. Doctoz Arays Cale, to this purpole.

Mich. 30 & 31 Eliz. In the Common Pleas.

CCXXIX. Huson and Webbs Case.

Obert Huson brought an action of Debt against Anne Webb, Admi. Debt lieth not R nistratrix of Joan Webb, and veclared of a Contract without specialist exact the Defendant pleaded, Chat sie had fully administred, and to of an Adit was found against her. And now it was moved for the Defendant, 1 Cro. 121. That upon the matter an action of Debt doth not lye against the Erezyl. 20. cutog of Administratrix; which was granted by the Court. But the 9 Co. 87. bouht was, If now, foralmuch as the Defendant by pleading the plea above, hath admitted the action, the chall now take advantage of the Law in that point. For the reason why this action doth not lye against an Executor or Administrator is, because the Testator himself might have waged his Naw, if he had been impleaded upon it; and by intendment of Law the Executor or Administrator cannot have notice of such a Debt, og of the discharge of it; But now by answering to the Declaration as above, the Defendant hath taken notice of the Debt, and in manner confessed it. And by Rhodes and Anderson, Judgment shall be given against the the Plaintist, because it is apparent to the Court, that the action both not lye. And by Anderson, If Judgment be entred against the Administratrix, in such an action upon Nihil dicir, the Court, lex officio hall give judgment against the Plaintist. Periam and Windham doubted at the sixt that the Defendant by her plea had admitted the whole matter upon the specially administred, pleaded, and had taken notice of the Debt, 41 E.3.13.46 E.3.10,11.13 E.4.25.13 H.8.Fitz.Execut.21. And asterwards Anderson, exassens of the other Judges, caused to be entred, Querens capiat nihil per breve.

Mich. 30 & 31 Eliz. In the Common Pleas. Intrat. Mich. 29. & 30 Eliz

CCXXX. Hambleden and Hambledens Cafe.

Deviles. 1 Cro. 163. 1 And. 381. Defendant, was seised of the Lands, &c. And by his Will deviced to his Eldes Son, Black Acces to his second Son, White Acces and to his third Green Acces, in tail. And by his said Will further willed, That in Case any of my said Sons do due without issue, that then the Survivor de each others heir, The Eldes son dieth without issue, &c. It was moved by Gawdy Serjeant, That the second Son shall have Black Acce in tail, and he cited the Case 30 E.3.28. propinguioribus heredibus de sanguine puerorum, for the construction of such devises. Walmessey argued, That both the surviving Brothers should have the said Black Acce, so, the words of the devise are quilibet superviven, which amounts to uterque; and the Court was in great doubt of this point. And they concessed, That the estate limited in Acmainder to the Survivor, &c. is a fee-simple by reason of the words, Each others heir; And also they concessed, that both the Survivors should not have the Land, for the same is contrary to the express words of the devise, The Survivor shall be each others heir, in the singular number; see, E.6. Br. Devise 38. A man sessed of Land hath since three Sons, and deviseth part of his Lands to his second Son intail, and the residue to his third son in tail: and willeth, That none of them shall sell the Land, but that each shall be heir to the other, The second son, but shall remain to the third son, notwithstanding the words each shall be heir to the other, the eldes Son, but shall remain to the third son, notwithstanding the words each shall be heir to the other.

Hep. 35.

1 Len. 262.

Mich. 30, &31 Eliz. In the Common Pleas.

CCXXXI. Slywright and Pages Cafe.

Montenance. More. 266. 1 And. 201. Goldf. 101, 102. An Information was in the Common Pleas, by John Slywright against Page, upon the Statute of 32 H.8. of Apaintentance; and declared that the Defendant took a Aeale of one Joan Wade, of certain Lands, whereas the laid Joan was not seised not possessed thereof according to the Statute; and upon Not guilty, the Jury found this special matter, That Edmund Wade was seised, and made a Feosiment in see there of unto the use of himself, and of the said Joan, who be then intended to marry, and the heirs of the said Edmund. The marriage took essent Edmund enseossed a Stranger, who entred, Edmund died, Joan not having had possession of the said Land after the death of Ed. her husband not bing now in possession, by Indenture demised the said Land to the Defendant so, years, without any Entry of delivery of the Indenture upon the Land, The said Defendant knowing the said Joan never had been in possession of the said Land, and also the Defendant being Brother of the half blood to the said Joan. The first Auestion was, If the Lease being made by one out of possession, and not sealed of delivered upon the Land, and so not good in Law as to pass any interest, be within the Statute asocials. And the whole Court was clear of opinion that it was: for by colour of this pretended Lease, such might be undertaken advanced to the trouble a disquiet of the possession, so, amongs the vulgar people, it is a Lease, it is a Lease by Reputation: Another matter was moved, because that the entry of the wife is now made sawful by 32 H.8-and then she might well dispose of the Land.

But as to that, It was faid by the whole Court, Chat the meaning of the Statute was to reprefe the practiles of many, That when they thought they had title or right unto any Land, they for the furtherance of their pretended Right conveyed their interest in some part thereof to great persons, and with their countenance did oppress the possesses: And although here the Lease was made by the said soan to her Brother of the half blood, yet by the clear opinion of the Court the Lease is within the vanger of the Statute, and petinsome Case the Son may maintain his father, the Kinsman his kinsman. And note inthis cale it was holden by the Justices, That of necessity it ought to be found by verdict, That the Befondant knowing that the Leson neper had been in possession. And Judgment was given for the Plaintiff.

Mich. 30, & 31 Eliz. In the Common Pleas.

CCXXXII. Brokesby against Wickham and the Bishop of Lincoln.

Da Quare Impedit, the Plaintiff counted, That Robert Brokesby mas Quare Impedit. leise of the Addowson, and granted the next Avoidance to the Plain. 3 Len. 256. tuf, and Humphrey Brokesby, and that afterwards the Church became a Cro. 173. void, and after during the avoidance, Humphrey released to the Plain. Owen 35, 86. tiff, and so it belongs to him to present. And upon this count the Des Popham. 189. fendant did demar in Law. Foz it appeareth upon the Plaintiffs own shewing, that Humphrey dught to have joined with the Plaintiff in the action, toz the Release being made after the Church became word, is not of any effect, but utterly void. So is the grant of the presentment to the Church where the Church is void, foz it is a thing in action. See the Lozd Oyer, 28 H.6.26.3 Ma. Dyer 129, 11 Eliz. Dyer 283, Walmsley Sericant put this Case, Two Joint-tenants of a Kent, the one may release to the other, but if the Kent be behind, now the one cannot Release his Interest in the Arreatages to the other. And afterwards in the Principal case Judgment was given that the Kelease was void.

Mich. 30, & 31 Eliz. In the Common Pleas. Intr. Trin. 29 Eliz. Rot. 721.

CCXXXIII. Sammes and Paynes Cafe.

In an Ejectione firme the case was, That the Apother being seised of certain Lands, had issue wo Daughters, and by Indenture cover Tenant by the named with diverte persons to stand seised to the use of Eliz, her expest curtesse. Daughter in tail, upon condition that the said Eliz, should pay to her of Goldsb. 81.82. ther Daughter within a year after the death of the Apother, of within 8 Co. 34. a year after the said other Daughter should come to the age of eighteen bears a cold such the said Eliz, said the said the said the said said the years, 300 l. And if the faid E should fall in the payment of the sum aforelaid, or should de without inue before such payment, then to the use of the said second Daughter in tail, The Bother dieth, E taketh busband, hathissue, a afterwards dieth without issue before the day of pay ment. And if the Dusband thall be tenant by the curteffe of not, was the Question, and by the Court electly, he shall be, For as to the condition of payment of the laid Sum, the lame is not determined; for the view without iffue before the day of payment, soil before the second Daughter came of the age of eighteen years, a asto that there is no condition woken; eas to the point of dying without iffue, The fame is not a condition

but rather a Limitation of the Estate, and the same is no moze than what the Law saith, and the estate tast in Elizabeth is spent and determined by the dring without issue; and doth not cease, or is cut off by any Limitation; and afterwards Judgment was given for the Cenant by the curtesse. And by Anderson, Is a feosiment be made to the use of i. S. and his heirs, until i. D. bath done such a thing, and then unto the use of i. D. and his heirs, the thing is done, and i. S. dieth, his wife shall be endowed.

Mich. 30, & 31 Eliz. In the Common Pleas.

CCXXXIV. Bowry and Popes Case.

1 Roll. 676. Plow. Queries verf. finem.

Nulance.

Dowry brought an Action upon the Case agains Pope, and declared, that in the time of E.6. the Dean and Chapter of Westminster, leased two houses in Saint Martins in London to Mason for sixty years, The which Mason, leased one of the said Houses to one A. and codenanted by the Indenture of Lease with the said A. that it should be lawful for the said A. his Executors, and assigns to make a window in the shop of the house to to him assigned, and afterwards in the time of Queen Mary, a window was made accordingly, where no window was there before. And afterwards A. assigned the said house to the Plaintist. And now Pope having a house adjoining, had exerted a new bussing super solumings thereby stopped. The Defendant pleaded, Not guilty, and it was found too the Plaintist, and it was moded for the Defendant in arrest of Judgment, that here upon the Declaration appeareth no cause of action, softhe window, in the stopping of which the wrong is assigned, appears upon the Plaintists own shewing to be offate exerce, sol. in the time of Queen Mary, The stopping of which by any accupant my own Land, was holden lawful and judisable by the whole Court. But if it were an antient window time out of memory, &c. there the light or benefit of it ought not to be impaired by any act whatloever; and such was the opinion of the whole Court. But if thecase had been, That the house estate of Mason, who covenanted as abovesaid, Then Pope could not have justified the nusance, which was granted by the whole Court.

Mich. 30, & 31 Eliz. In the Common Pleas. Intrat. Mich. 29, & 30 Eliz. Rot. 1737.

CCXXXV. Lee and Maddoxes Cafe.

Covenant.

William Lee brought a Witt of Cobenant against Richard Maddox, & Isabel his Wife, and declared. Chat one Errington the sixth husband of the said Isabel was endebted to the Plaintiss in 201 and that one Georgy Ashley was also endebted to the late Errington, in the like sum of 201. And also that the said Errington made and constituted the said Isabel his Crecuttic, and vied, and afterwards the said Isabel by Indenture dum ipsa sola fuit, rectifing that whereas her said late husband was endebted to the Plaintiss in the sum asoresaid, and whereas the said George Ashley was also endebted unto her said late husband in the like sum, was also endebted unto her said late husband in the like sum, was also endebted unto her said late husband in the like sum, was also endebted unto her said late husband in the like sum, who say the better satisfaction of the Plaintiss so, his said Debt, she appointed and constituted the Plaintiss for his said Debt, she appointed and constituted the Plaintiss aturnatum sum irrevocabilem ad petendum, levandum, receperand & recipiend ad usum sum proprium in nomine dict. Isabella de dicto Georgio, the said twenty pounds; And the said Isabel covenanted, quod ipsa ad requis dict, quer, de tempore in tempus, adjuvaret, & manu teneret quamlibet & omnes sectam & sectas

sectas quam vel quas dictus querens commensaret & prosequeretur in nomine dicta Isabella, against the sato George, to the use of the Plaintiff Non existendo Non-suit voluntarie, or making any Discontinuance, Release, Kevocations, Anglice, Countermand, without the assent of the Plaintist: And declared surther, that the Plaintist had brought a Suit against the said George so, the said Debt, and shewed all in certain. And that the said Isabel, depending the said Suit, had taken to Pushand the Desendant without the assent of the Plaintist: And if by this Warriers of the Countermannehmas the Question. And first it Defendant without the affent of the Plaintiff: And if by this Aparticage the laid Suit be countermanded was the Question. And first it seemed to the Court that the Declaration was insufficient, because there is not any request surmised in the Declaration, for the words of the Covenant are, Quod ipsa ad requisitionem, &c. So as it seemed to the Justices, that the Plaintissought to have notified to Isabel that he had commenced such Suit, otherwise the Action will not see. And also the Court was of opinion, that here is not any Countermand, for by the taking of the Pushand the Writis not abated, but only abateable; and therefore the Plaintiss ought to have shewed, that by the taking of the Dusband, the Writis not abated, otherwise stiss not any Countermand, and then no cause of Action. it is not any Countermand, and then no cause of Action.

Mich. 30, & 31 Eliz. In the Common Pleas.

CCXXXVI. Salway and Lusons Case.

Atthew Salway brought a Wirit of Right against Luson, and the Writ of Right. was raken to the Witt, because jampnor. & bruere. And exception 2 Len. 36. where they ought to be diffinguished severally, As so many acr. jampnor. and so many acr. bruer. although it were objected on the part of the desmandant in the maintenance of the Carit, that in the Register the Witt of Right is redicu unius libræ of Cloves and Wace together, with out distinction of everance. And it was said, that in a Witt of Right a Writ. we ought to follow the Aegister, and therefore a Writ of Aight was abated, because this wood (Pomarium) was put in the Witt, for in the Re-gister there is no such Witt, because the wood Gardinum comprehends it: But in other wits as Writs of Entry, &c. it is otherwise. See the Take of the Lozo Zouch, 11 Eliz.353, In a Witt of Entre fur diffeilin mille acr. jampnor. & bruer. But this exception was not allowed, for it may be that jampnor. & bruer. are so promissions that they cannot be diffinguished: Vide 16 H.7.8.9. The respect the Justices had to the Aegister, was such, as they changed their epinsons and conformed the same to the Register. Another exception was taken to the Alrit, because thereby the Demandant doth demand Duas partes Custodiæ del Hay in the Forcest of C and the Court was of opinion that the Writ ought to be Officium Custodiæ duarum partium de Hay, &c. and not Duas partes Custodiæ, As Advocationem duarum partium Ecclesiæ, And not Duas partes Ecclesiæ. Another Exception, because the Marit was, duas partes, &c. in tribus dividend, subers it should be Divis. for Dividend. is not in any Marit, but only in a Marit of Partition; And by Windham the parts of this Office are divided in the Marit which the Court granted. Quarter of Frenchism was taken. Right, which the Court granted. Another Erception was taken, because that in the Wist it is not set down in what Cown the Forest of C. is, so as the Court doth not know from whence the Asin should tome: For no Venire shall be de vicineto Forestæ, as de vicineto Hundredi, & 1 Cro. 200.

Manerii: And the same was holden to be a material Exception. And thet Exception was taken, because a Wirit of Right both not lye of Vine. an Office: for at the Common Law an Affice did not the of it, but now

Copyholder determined by acceptance of a Leafe. 2 Co. 16, 17.

Copy in fee; the Queen leased Bl. acr. to B. foz one and twenty pears, who assigned the same to the Copyholder, who accepted of it. The Queen granted Bl. acr. to C. in fee, the term expired, C. entred, and his entry was holden to be congeable, for by acceptance of the cam Cerm, the Customary Estate was determined, as if the Coppbolber had accepted it immediatly from the Ducen: It was also holven by the Court, that a Leale for years under the Seal of the Erchequer may be pleaded, and that without making mention of the Commission, by which the Court of Exchequer is authorized to make such Leales: And so are all the Presidents as well in this Court as in the Court of Erchequer. And whereas the Court was upon the point of giving their Judgment, It was objected by Shuttleworth Serjeant, That here is pleaded a Bargain and Sale of Land, without, laying proquadam pecunix summa: And he stood much upon the Exception, and the Court also doubted of it, and demanded of the Prothonotaries what is their form of pleading: And by Nelson chest Prothonotary; these Bargain and Sale, and con- words Pro quadam pecuniæ summa, ought to be in the pleading. Scot 1920- sideration of it. thonotary contrary. Anderson conceived it was either way good, but Pro quadam pecuniæ fumma is the beft: And to Leonard Custos Brevium conceived. And the opinion of the Justices was, that a Bargain and Sale for vives Causes and Considerations is not good without a sum ca. Mildmays of money And by Windham, Bargain and Sale Pro quadam pecuniæ summa, case.

although no money be path, is good enough, for the payment or not payment is not travertable: And by Periam, If Pro quadam pecuniæ summa, be not in the Indenture of Bargain and Sale, yet the payment there of is averrable. And for this Exception the Judgment was flaved.

Cafe.

Bargain and

Mich. 30, & 31 Eliz. In the Exchequer Chamber.

CCXXXVIII. Bedel and Moores Cafe.

Action upon the Case for not performing an Award.

10 Co. 131. 5 Co. 108.

Eiror.

Bedel brought an Action upon the Cafe against Moore in the Kings. Bench, and beclated, Chat the Defendant did assume to perform the Award of J.S. and affirmed also, that he would not sue Execution upon a Judgment which he had obtained against the Plaintist in an Active on of Account, &c. And hewed further, that the Award was made, &c. (which Award in Law was utterly void ) and that the Defendant hav not performed the laid Award, and also that he had sued Execution against the Plaintiss. The Defendant pleaded Non-assumptic, and it was found for the Plaintiss, and sudgment given accordingly. Apon which Moore drought a Clift of Error in the Exchanger, the 1914 wife on the Statute of 27 Eliz. And affigned Erroz, because the Plaintiff had beclated upon two Breaches, whereas for one of them there was not any cause of Action, for the Award is void in Law, e then no breach could be assigned in that; and then when the Jury bath assessed Damages intirement for both breaches, whereas for one there was not any cause of Action by the Law, the Aeroict was void, then the Judgment given upon it reversable; so, it is not reason that the Plaintiff have Damages for luch matter for which the Law both not gibe an Action.

and if the Jury had affeffed damages feverally, viz. for the not performance of the Award la much, and for the lung forth Execution to Damages. much, then the Judgment had been good, and the damages affested for the not performance, &c. void. Manwood Chief Baron: The verdict is much, then the Judyment had been good, and the damages affelied for the not performance, &c. void. Manwood Chief Baron: The verdict is well enough, for here the whole Affinipht is put in iffice, and there is but one iffue upon the whole Affinipht, but it several iffues had been joined upon their feveral points of the Affunipht, and both had been found for the Plaintiff, and damages affested entirely forboth breaches, then was the Judyment reversable, for death flues the Judymight hade assessed the damages severally. Soil for each iffue several damages, but here is dut one iffue, and it was the folly of the Defendant that he would not dennut in Law upon the Dectaration so one part, soil, the not performance of the Award, and traverse the other part, soil, the not performance of the Award, and traverse the other part, soil, the not performance of the Award, and traverse the other part, soil, the not performance of the Award, and traverse the other part, soil, the not performance of the Award, and traverse the other part, soil, the not performance of the Award, and traverse the other part, soil, the not performance of the Award, and to the performance of the Award: And note that the verbus for assessment of the Damages was in these Cerms, soil. Exassidated and coasses of the Damages was in the Cerms, soil. Exassidated among occasione non performationis Assumptionis practice. And Cook who was of Councel in this Case, but this Case. The late Earl of Lincoln, Admiral of England, thought his Assistance against the Declared, That the Descendant exhibited in the Sair, chamber against him a Bill of Complaint, containing others breat and infamous standers: viz. That the Into Earl mas a great and outragious oppression; and nicely have a great and infamous supposed out; and other during the Plaintist had declared upon matter of standers or part, for which an Action seed, and makes, and it was moved in stap of Judyment, since, the made so their second into him, and although he cannot probe the woong, an action with not the, afterwards in the principal cale, the last day of this term, Audiment was stated.

Hill. 31. Eliz. In the Kings Bench.

# CCXXXIX. Palmer and Thorps Cafe.

Betwirt Palmer and Thorpe, the Cale was this, A man demited his a cro. 152 Wandur of M. for thirty two years, and the day after let the fame wandur for forty years, to begin from Michaelmas, after the bate of the first Leale, and the Cenant attorned. And by Cook the same is a good grant, although to begin at a day to come, for it is but a Chattel; and so was the opinion of Wray Chief Justice, for a Leale for years may expert its commencement, as a man leised of a Kent in Fee grants the same for twenty years from Mich following, and good, so no estate passeth presently, but only all Interest. See 28 H. 8.26, Dyer. bolden, that the Constant was e gepolari, that the Condens to polarise to the condens to the condens

Hill. 31 Eliz. In the Kings Beach. Rot. 668.

CCXL. Sir Anthony Shirley and Albanyes Cafe.

Affumplit.

In an Action upon the Cale, upon Assumplit by Sir Anthony Shirley against Albany. The Plaintist Declared, Chat he was leised of the want of Whittington for the term of his life, the Aeversion to the Earl of Arrundel in fee, and to leifed, lucrendered all his Effate to the fato Earl, who afterwards by his Deed granted a Rent-charge of 401, per annum out of the fato Mannoz to him, and afterwards conveyed the Manoz to the Defendant in fee. and afterwards, 27 Maii 22 Eliz. up. on a Communication betwirt the Plaintiff and the Defendant concerning the laid Kent; the Defendant did promile to the Plaintiff, that if the Plaintiff would thew unto the Defendant any Deed, by which it might appear that he ought to pay to the Plaintiff luch alent, he would pay that which is due, and that which hould be due from time to time. And further declared, that 27 April 27 Eliz. he she we unto the Defendant a Deed, by which it appeared that such a Rent was granted, and due; and for eighty pounds due for the two lat years, he brought the action. The Defendant pleaded, that after the satio promise, and before the shewing of the said Deed, sail, 14 Jan. 22. Eliz. the Plaintist entred into the said Land, and leased the same for thice peacs. The Plaintiff Replicando laid, that I Decem. 27 Eliz. the Defendant oid re-enter, upon which they were at Mue, and it was found for the Plaintiff. It was moved by Glanvil Berfeant, that by the entry the Plaintiff. It was moved by Glanvil Berfeant, that by the entry the Promise was suspended, and being a personal thing once suspended, it is always extinct. Wray, The Action is brought for the Arrerages due the two last years, and so at the time of his re-entry the Plaintiff had not cause of Action, and therefore it could not be suspended. Gawdy, When the Plaintiff sheweth the Deed, the Defendant is tharmable to arrerages due before and after the promise; wherefore if the entry maketh a suspending of the Kent, the suspension doth continue; but I conceive here is not any suspension, for this promise is a tinue: but I conceibe bere is not any fuspension, for this promite is a meer collateral thing, and to not dicharged by the entry into the Land, for it is not isluing out of the Land. But if the Plaintist before the Deed shewed had released all actions, the same had been a good Bar; and I conceive that the Deed was not shewed in time, for it ought to be themn befoze any arrerages due after the promite, but here it is themn five years after: But that was not denied by all ther other Justices. Another exception was taken, that where the promise was, that if the Plaintist hewed any Deed by which it might appear, that the Defendant hould be charged with the said Rent, and the Declaration is, by which it might appear, that the Plaintist ought to have the Ment, see so as the Declaration both not agree in the whole. See 1M. 143. In Browning and Bestons Case, the Condition of the Reale was, if the Kent hould bearrear, not paid by two Wonths after the Feat, &c. and the Rejoynder was by the space of two months, &c. and the pleading holden insufficient, for per duos menses both not affirm directly post duos menses, but by Implication and Argument: And here it was holden, that the Condition was a good consideration. Another exception was taken, because the promise is layed, All the Kent ad tunc debitum aut deincess debend. It was holden, that this many (ed nuce) both retion was taken, because the promite is layed, and the stell ad tune decitum aut deinceps debend. It was holden, that this word (ad tune) both tester to the time of the spewing of the Deed, and not to the promise. And as to the last exception but one, it was resolved, that the Declaration, notwithstanding the same, was good enough (scil.) oftendit sactum per quod apparet quod redditus prædict. solvi deberet in forma prædict. Another exception was taken, because here no breach of the promises allegred. alledged,

Suspension of Rent.

alledgeb, for it is pleaded, thath eight pounds de annuali redditu arrer. fuer. but it is not faib, de redditu prædict. 8 1. ergo it may be another Bent, and then the promile, as to this sent, is not broken. Wray, Although the word (prædict.) be wanting, yet the Declaration is well enough, and it word (prædict.) be wanting, yet the Declaration is well enough, and it thall be intended the Rent mentioned before. See 21 H.7.30.6. Where (Villa West.) shall be intended Villa prædict. 19 E. 4.1. In a Quare Impedict the Plaintist doth entitle himself by grant of the next Abopdance cum acciderit, and doth not shew in his Count that the same was the next Abopdance, and yet the Count was holden to be good, for so it shall be intended; so here: And he said, It is not necessary that a Declaration be exactly certain in every point, but if one part of it expound the other, it is well enough: And although the Identity of the Rent doth not appear by the word prædict yet it appeareth by other circumstances, as by the days of payment, &c. and no other stent can be intended. Ind now, this Exception is after cierdict, and therefore savourably And now, this Exception is after Clerdict, and therefore favourably to be taken: And afterwards Judgment was given for the Plaintiff.

Hill. 31 Eliz. In the Kings Bench.

CCXLI. Musted and Hoppers Case:

Man Action upon the Cafe, the Plaintiff Declared, Chat where he Affumfe. and one Ackinfal, were joynely and severally bounden by Obligatis a Cro. 149. On in fifty pounds, to a stranger, for the only Debt of the laid Ackinfal, which Ackinfal died, and the Defendant married afterwards his Talife, and so the Goods of Ackinfal came to his hands; yet the Plaintiss, the sirst day of May after, which was the day of payment of the money, paid five and twenty pounds for abouting the Forseitute of the penalty. The Defendant as well in connderation of the Premises, as in consideration that he wight neareably enjoy the Mayor of the Testa. consideration that he might peaceably enjoy the Goods of the Cestatog promised to pay the laid sum, cum inderequisitus suer. And upon Non Assumpsie, the Jury found the payment of the said sum, and all the precedent matter: And that the Defendant in confideration pramidiorum, promised to pay the said sum if he might peaceably enjoy the Goods of thesaid Cestator. It was moved in access of Judgment, that although here the Jury have found sufficient cause of Action, yet if the Declaration be not accordingly, the Plaintiss shall not have Judgment. And verdiction be not accordingly, the Plaintiss shall not have Judgment. And verdiction the Plaintiss have declared upon two Considerations, and the Jury hath found but one, soil is he peaceably enjoy the Goods of the Teffatoz. Also the Plaintist veclated of a simple promise, and the Jury have found a Conditional, Si gaudere potest, &c. And so the promise
let forth in the Declaration, is not found in the Aeroia.

Gawdy was of opinion, That the first consideration is good, for the consideration.

Plaintiff entred into Bond at the request of the Defendant, and then the promise following is good: But the second consideration is void, sil. Chat the Defendant hall enjoy the goods of the Cesiatoz, &c. as if it had been that he should enjoy his own goods. And all the Justices were clear of opinion, That the Promise found by the Jury is not the promise alleaged in the Declaration, and so theisure is not sound so the Plaintist, and so the judgment was slaved.

Devise conditional. 1 Cro. 146. 1 Roll. 410. 1 Inst. 236. b.

Of certain Lands in Fee, and having issue two Daughters, dehiced the same to Alice his Eldest Daughter, that she should pay forty pound to Ann her Sister at such a Day, the money is not paid, where upon Ann entreth into the moiety of the Land: And it was holden by the whole Court, that the same is a good Condition, and that the Entry of Ann was lawful. It hath been adjudged, Chat where a man devised his Land to his wife, Proviso, My will is, Chat she shall keep my house in good Reparations, that the same is a good Condition. Wray, A man deviseth his Lands to B. paying 40 l. to C. it is a good condition; for C. bath no other remedy, and a Cissl ought to be expounded according to the intent of the Devisor.

CCXLII. Creckmere and Patterfons Cafe.

Hill. 31 Eliz. In the Kings Bench.

CCXLIII. Dove and Williots and others Cafe...

115 Kit

r Cro. 160.

In an Ejectione firms, upon a special Aerdick, the case was, Chat W. was seised of the Land, where, &c. and held the same by Copp, &c. and surrendzed the same unto the use of E. for life, the Kemainder to Robert and A. in Fee, Robert made a Lease to the Desendant; E. Robert, &c. A. surrendzed the said Land, scilla third part to the use of Robert for the life of E. the Remainder to the Right heirs of Robert, and of another third part to the use of Robert for life, the Remainder to E. the Kemainder to Richard, &c. and of another third part to the use of A. and his peirs. After which Partition was made betwirt them, and the Land where, &c. was allotted to Richard, who afterwards surrendzed to the use of the Plaintist. It was holden, Chat Judgment upon this verdict ought not to be given sor the Plaintist, For the Lesse of Robert had the sirst possemon; and that Lease is to begin after the beath of E. who was Cenant sor life, and when E and he in the Keberston joyn in a surrender, thereby the estate sor life in that third part is criting in Robert, who hath the Indecitance, and then his Lease rook essent sor a third Part. So that the Parties here are Cenants in Common, betwirt whom Crespass both not by.

1 Inft. 200.

Hill. 31 Eliz. In the Kings Bench.

CCXLIV. Bulleyn and Graunts Cafe.

Copyhold.

Devise. 1 Cro. 148. I hon Evidence to a Jury, the Cale was, That Henry Bulleyn the father, was seised of the Land being Copyhold, and had June three Sons, Gregory, Henry, and Thomas, and afterwards succeeding to the use of the last Will, and thereby devised the fath Land to Joan his calife for life, the remainder to the said Henry, and the Peirs of his body begotten: Joan died, after admittance, Henry died without Islue, and afterwards the Lord granted it to Thomas and his heirs, who surrended to the use of the Defendant then his Wise society, and afterwards died without Islue: Gregory eldest Son of Henry Bulleyn entred, &c. Coke, Calhen the Father surrendeth to the use of his last califil, thereby all passeth out of him, so as nothing accrueth

eth to the Deir, not can be have and bemand any thing before admittance. Wray, The entry of Gregory is lawful, and admittance for him is not necessary, for if a Coppholder surrendereth to the use of one for life who is admitted, and dieth, he in the Leverlion may enter without a new Admittance. It was moved by Coke, if this Effate limited to Henry be an Effate tail, or a fee conditional. For if it be a fee-fimple conditional, then there cannot be another. There were but yet in take of the confidence of the conditional of th dictional, then there cannot be another Ethate over: but pet in case of a Devise an Estate may beyond upon a Fee-simple precedent, but not as a Alisi, but as an Executory Devise. Wray, It is not a conditional Estate in fee, but an Estate tail. Coke, They who ivous prove the Custom to entail Copyhold Land within a Manor, it is not sufficient to shew Copies of Grants to persons and the being of their hopies, Copyhold e-but they ought to shew that surrenders made by such persons have state. been enjoyed by reason of such matter: VVray, Estatis not so, sor Customary Lands may be granted in tail, and yet no surrenders have been made within time of memory.

Mich. 31 Eliz. In the Hings Bench.

CCXLV. Matthew and Hassals Cafe:

Is an Ejectione firmæ, betwirt Matchew and Hassal, the Plaintist dad Judgment to recover, and the Oriendant brought a Wirth of Crear, and alligned Error in this, that the Judgment was entred, Quod querens recoperer possessionem, &c. where it should be (Terminum) vent. in ten. prædict. See 9 Eliz. Dyer 258. Coke contrary, Chat the Judgment is good enough, for the Wirth of Erecution upon it is Habere facias possessionem, and in a real Action the Writis, Quod percuperer session, and the recommendation of the session of the sessi not terram. And afterwards Judgment was affirmed.

Hill. 31 Eliz. In the Kings Bench.

CCXLVI. Tempest and Mallets Cafe.

I an Action of Crespals by Tempest against Maller, Judgment was given, and Eroz brought, and assigned soz Erroz that whereas the action was brought against sour, one of them vied, Weine betwirt the Award of the Nis prius, and the Anguest taken: And it was sato on the part of the Desendant in the Colrit of Erroz which was entred upon the Record, that the Plaintist shewed unto the Court the death of one of the Desendants, and prayed Judgment against the others. See 4H.7.2 Eliz. 175. And there is a disserence, where in an Action of Erespals there is but one Desendant, and where many. Another Erroz was assigned, the Desendant Obtulic se per Higgins Actornat. Suom, without shewing his Christian Rame, as John, of Villiam, of Higgins only without the Christian Rame, is not any Planne, so it is but an addition to hew, which John, of Villiam, Coke, The same is believed by the Statute hew, which John, 02 VVilliam. Coke. The lame is beloved by the Statute of 32 H.8.eap.30. Where it is enamed, that after Aernic, Judgmens that be given norwithfianding the lack of Marrant of Atromey of the Party against whom the liftue shall be tried, 02 any default or negligence of any the parties, their Countellogs or Attorneys; and of necessity this default here in the Chistian Pame ought to be the fault of one of them. See also 18 Eliz. Cap. 14. for want of any Marrant of Attorney, &c. Glanvil, The Statute provides for default of Marrant of Attorney, &c. Then (Coke) To what end was the Statute of 18 Eliz. made? for the Intuit of 22 H.8. provides for defens of Marrants of Attorney Glandally. Statute of 32 H.8. provides for defeas of Marrants of Attorney. Glanvil, The first Statutes for Warrants of Attorneys of fuch persons a-

1 Cro. 768. 3 Cro. 22.

ratum.

gainft whom the Iffue was treed, but the later Stat. is general. Ano. ther Erro! was alligned, Quod defendens Capiatur, where the Offence, & so the Fine is pardoned by Parliament, and therefore the entry of the Judgment ought to be, Et de fine nihil, quia perdonatur. Coke, The Judgment is well enough, for in every general Pardon some persons are excepted; & it both not appear if the Defendant here were one of them, and then the fine is not pardoned, forthe Court cannot take notice of that, as it was holden in Serjeant Harris Cale: but if the Defendant be charged with the Fine, then he ought to plead the parbon, and to them that he was not any of the persons excepted. And afterwards at another day the Defendant of alledge, that there was a Martant of Attorney in the Common Pleas. And also it appeareth upon Record, that the Defendant did appear upon the Superiodeas by Attorney, who had his full Pame, and therefore prayed a Certiorari de 1000, to certifie the same matter, vide 9 E.4.32. VVray, A Case here greatly debated betwirt the Lord Norris and Braybrook, and upon Advice such a Witt of Certiorari was granted after the Plaintiss had pleaded in nullo est erratum; for this Plea, in nullo est erratum, goes but to that which is contained within the hadron of the Passar and norther to that which is contained. In nullo eft ered within the body of the Record, and not unto collateral matter, feil. Marrant of Attomeys: And afterwards the Wift of Erroz was allowed, and upon the day of return thereof, it appeared upon the Aecozd of Superseders, that the Defendant of appear by such a one his Attoiney: But it was said by the Court, that there ought to be two ar pearances, the one upon the Superfedeas, and the other when the Plain tiff beclares. See as to the name of the Attorney, Tirrells Cale, I Mar. Dyer 93.

Hill. 31. Eliz. In the Kings Bench.

CCXLVII. Palmer and Knowllis Case.

r Cre. 160.

Execution.

Capias after Elegit.

(3.7(0), - 1 / 10)

ASSESSMENT OF STREET STREET

Almertecobered Debt against Knowllis, and fued Erecution by Elegit, upon which the Sherist returned, that he had made Execution of the lands of the Defendant by the Dath of twelve men, but he could not beliver it to the party, for it is extended to another upon a Statute, upon which the Plaintist sued a Capias ad satisfaciendum. And now came the Defendant by his Counsel, and moved that after Elegit returned, the Plaintist could not resort to the Execution by Capias, and therefore prayed a Supersedeas, because the Capias erronice emanating. But the whole Court was clear to the contrary, for upon Nihil returned upon Elegic the Plaintist shall have a Capias, as Edge as the recurrence upon Elegic the Plaintist shall have a Capias, as Edge as the recurrence upon Elegic the Plaintist shall have a Capias, as Edge as the recurrence upon Elegic the Plaintist shall have a Capias, as Edge as the recurrence upon Elegic the Plaintist shall have a Capias. But the whole Court was clear to the contrary; to upon Ninit returned upon Elegit, the Plaintiff thall have a Capias, 17 E.45. See 21 H.7.19. A man thall have a Capias after a Fieri facias, 02 Elegit, 34 H. 6. 20. and here the special return both amount to as much, as if the Sheriff had returned Nihil: Also the Statute of West. 2. which giveth the Elegit, is not in the Regative, and therefore it thall not take away the Execution which was at the Common Law. And here is no Execution returned, for after the former extent ended, he ought to have a new Elegit, which Wray granted: And afterwards the said Knowllis was taken by force of the Capias ad satisfaciend and came into Court in the Custody of the Sheriff, and the Case was opened, and in the whole appeared to the Sheriff, and the Case was opened, and in the whole appeared to be worthy of favour; but by the Law he could not be helped, and although be instantly prayed a Superfedeas, yet the same was benied unto

# Hill. 31 Eliz. In the Common Pleas.

CCXLVIII. The Church-wardens of Fetherstones Case.

12 Action of Crespals was brought by the Church-wardens of Fe-Church-wartherstone in the County of Norfolk, and veclared, Chat the Detendent vant took out of the laid Church a Bell, and veclared; that the Cres. 1 Cro. 145. pals was vone 20 Eliz. And it was found for the Plaintiffs. And now 179. it was moved by Godfrey in arrest of Judgment, Chat it is apparent upon the Declaration, Chat the Crespals was vone in the time of their Preventellors, of which the Successor cannot have action; and actio perfonalis moritur cum persona. See 19 H. 6. 66. But the old Church-wardens shall have the action. Cook contrary, and that the present Church-wardens shall have the action, and that in respect of their office, which the Court granted. And by Gawdy, Church-wardens are a Corporation by the Common Law. See 12 H. 7. 28. by Frowick, Chat the Rew Church-wardens shall not have an action upon such a Crespals done to their Predecessor, contrary by Yaxley. See by Newton and Passon. That the Crecutors of the Suardian in whose time the Trespals was therstone in the County of Norfolk, and Declared, Chat the Defendem. That the Executors of the Guardian in whole time the Trespals was bone, fall have Erefpals.

Pafch. 31 Eliz. In the Kings Bench.

### CCXLIX. Hauxwood and Husbands Cafe.

132 an Action upon the Cafe, the Plaintiff declared for diffurbing of him to use his common &c. and the wed, that A. was setted of certain him to use his common &c. and thewed, that A was letted of certain tands, to which this Common was appendant, for the term of his Prescription. Life, the Remainder to B. in tail, and that the said A and B. diddemise 1 Cro. 1531 unto him the said Lands for years, &c. Pepper, The Declaration is not good, for it is not shewed how these particular estates did commence. See 20 E 4 10. By Piggor, Lesse for life and he in the Remainder, cannot prescribe together; and he in the Remainder cannot have common. Also he declares, That Cenant for life, and he in seemainder demised to him, whereas in truth it is the demise of Tenant for life, and the Consirmation of him in the semainder; also he not have the life of Tenant for life. Popham. De needs not to shew the not aver the life of Tenant for life. Popham, he needs not to them the commencement of the particular effates, for we are a franger to them, the Prescription in them both is well enough, for all is but one effate, and the Lease of both. See 27 H. 8.13. The Lesse for life, and he in the Reversion made a Lease for life, and sopned in an action of wast, and there needs no averment of the life of the Tenant for life, for he in the Reversion hath joyned; which Gawdy granted as to all. And say the narricular effates are but as connevance unto the action. Wrey faid the particular effates are but as conveyance unto the action. Wray conceived the first Exception to be material, &c.

Trin. 31 Eliz. In the Kings Bench.

### CCL. Sweeper and Randals Case, Rot. 770.

IN an Action of Trespals for breaking of his Close, and catrying at way his goods, by Sweeper against Randal, upon Not guilty pleaded, i Cro. 1562 of Jury found, Chat one John Gilbert was seised of the Land, where, &c. and leased the same to the Plaintist at Mill, who sowed the Land, and afterwards the Plaintist agreed with the said Gilbert, to surrender to him the said the plaintist agreed with the said Gilbert, to surrender to him the faid Land, and his interest in the same; and the said Gilbert entred, and leased to the Defendant, who took the Coin. It was moved,

Surrender.

moved, if these words, I agree to surrender my Lands, be a present and express surrender. Gawdy, It is not any surrender, sor Tenant at will cannot surrender, but it is but a relinquishing of the estate, if it be any thing; but in truth it is not any thing in present, but an act to be done in suture. Wray, I agree. A. demiseth the Manor of D. at will, it is no Teale, no more shall it be here any Surrender, or any relinquishing of the estate. Clench concessed, That the intent of the Party was, to seave his estate at the time of the speaking, otherwise those words were doid, sor he might seave it at any time without those words. Gawdy, I such was his intent, the Jury ought to find it expressly; and afterwards Judgment was given sor the Plaintist.

Trin. 31. Eliz. In the Kings Bench.

OCLI. Ward and Blunts Case.

Trover and Conversion. 1 Cro. 146. Henden in Middlefex, and the conversion of them; The Defendant pleaded, Chat before the conversion, he was seised of certain Lands called Harminglow in the Country of Stasford, and that the Coin whereof, &c. was there growing, and that he did sever it, by force of which was possessed, and that the did sever it, by force of which was possessed, and that the did sever it, by force of which was possessed, and that the did sever it, by force of which was possessed, and the lame came to the hands of the Desendant at Henden, aforelaid, and the same came to the hands of the Desendant at Henden, aforelaid, and the some which the Plaintiss did not used at twas lawful for him to do upon which the Plaintiss did do bemut in Law. Arkinson, The Plea is good, for the conversion is the point of the action, and the effect of it. For it a man take the same, and do not convert, he is not guilty. And piere the Desendant doth justifie the conversion, wherefore he cannot plead, Not guilty. The general since is to be taken where a man hath not any colour, but here the Desendant hath colour, because the Conversion, wherefore he cannot plead, Not guilty. The general since is to be taken where a man hath not any colour, but here the Desendant hath colour, because the Conversion, where a man hath not any colour, but here the Desendant hath colour, because the Conversion, that it doth amount but to the general since; pet there is not amy cause of Desnurrer, but the Plaintiss ought to have some any cause of Desnurrer, but the Plaintiss ought to be it. Egerton, the Queens Solicitor, contrary. The Othe Court, and pray that the general since be entred; and the Court of his goods, ut debonis suis propris, and the Desendant pleads, Chat he took the Sous sown goods, which is not any answer to the Plaintiss See 22 E. 218. In Teeloals of taking and carrying away his Teees, The Desendant pleades ober, without that that he took the Tees of the Plaintiss. So as a fast 22 and 30 E. 3.22. Another matter was, The Plaintiss. So as the there were of the P

### Trin. 31 Eliz. In the Kings Bench.

CCLIV. Cheiny and Langleys Case, Hill. 31. Eliz. Rott. 638.

De cale was, That Tenant for life of certain Lands leafed the I same for years by Indenture, with these words; I give, grant, 1 Cro. 157. bargain, and sell my interest in such Lands for twenty years, To have Leases and to hold, in such manner, and form as I my self out hold the same, and no otherwise: Tenant for life died within the Term, and he in the Aebersion entred, and the Lessee brought an action of Covenant. Godfrey, The action both not ly, for here is not any warranty, for the Plaintiffis not Leffee, but Alignee, to whom this warranty in Law cannot extend; but admit that the Matranty outbertend to the Plaintiff, pet it is now determined with the effate of the Tenant for life, and to the Covenant ended with the estate. See 32 H. 6. 32 by Littleton 9. Elid. Dyer 257. And if Cenant intail make a Lease for years (ut supra) and Covenant afterwards dieth without issue, the Covenant is gone, and after Judg. ment was given against the Plaintist.

Trin. 31. Eliz. In the Kings Bench.

OCLV. Fish, Brown and Sadlers Case, Intrat. Mich. 29 Eliz. Rot. 606.

M action upon the Case was brought by Fish and Brown against A Sadler, Hill. 29 Eliz. rot. 606. and they declared, That they were Action upon proprietaries of certain goods, which were in the possession of one A. the Case. against which A. Sadler one of the Defendants had commenced a feigned and covenous suit in the Ecclesistical Court in the Mame of one Collifon, to the intent to get the fair goods into his possession, of which the Plaintiffs having notice, and to the intent that the fair Plaintiffs thould lufter the Defendant to recover and obtain the sair goods by the sair suit, the Defendant dir promise to the Plaintiffs to render to them a true accompt of the sair goods; and shewed surther, That by the faid fuit the Defend. Did obtain the faid goods by fufferance of the Plaintiff. Tanfaild, It is a good confideration, the Plaintiffs were not parties or Priviles at the beginning of the fuit, & it is not like Onlies Cale in 19 Eliz. Dyer 355. Alberte in an action upon the Cale Onlie Declared, That Assumption and the Defendant Counters, &c. being a Albow, had bivers luits and built consideration. the Defendant Countels, &c. vering a Clivow, had vivers little and buffi-nefles, and that the Plaintiff at her request had bestowed great labour and travail, and had expended circa the assists of the laid Countels 1500! Colhereupon the promised to the Plaintiff to pay all the faiver-pences, and such a sum above, for that matter which is the ground of the action, is maintenance, and making probablium, but such matter is not here; for is is lawful for a man touse means to get his goods. Gawdy; all covins are abhorred in Law, and here the Plaintiffs are privies to the wrong, and therefore, stramot be any consideration. Wray, Although that the luit at the beginning was wrongful and covenous, bet when the Plaintiffs who were owners of the sain groups by affent to such diathe Plaintiffs who were owners of the fair goods to affent to such proceedings, now the luit is become full and lawful ab inicio, and lo no wrong Corin. in the confideration, but all the wrong is purged by the agreement. If any covin be, the lame is between Sadler and him who is lued, to whom the Plaintiffs are not privies. Clench, If this privity between the Plaintiss and Sadler had been befoze the laid lust; then the consideration is without any fraud. Cooper Serjeant conceived here is not any good consideration, upon which the Promise of the Defendant may be A a z grounded,

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grounded, for the Defendant bath not any benefit by it, and he cited the case between Smith and Smith 25 Eliz. Egerton, Dete the consideration is good enough, for the Plaintist sorbear their own suit, which was a hinderance unto them. Cleach was of opinion, that the Plaintist should not have Judgment, for that fuit was begun by Sadler in the Mame of Collifon without his privity, and therefor it was unlawful, and the fame was for the goods of another man, which is unlawful also, and then when the unlawful act is begun, the illegal agreement afterwards that they shall proceed is unlawful also, and therefore there cannot be any consideration: and as to the covin, it is not material, for without that the matter is illegal enough. Also the Declaration is not good in this, because it is not thewed in what Court the fuit did depend, so as it might appear unto us, that they had power to hold plea of it. Gawdy agreed with Clench in the first point, and also in the last; and by him, in the affumplit, the Plaintiff Declares, that a fuit was depending betwirt the Defendant and another, and where the Plaintiffs if they were moduced might have given firong witness against the Defendant, the laid Defendant in consideration that the Plaintiffs would not give Testimony against him, promised to give to the Plaintiff 201. the same consideration will not maintain this action; because it is unlawful for any man to suppress testimony in any cause. Wrzy, were is a consideration good enough, for where Sadler should lose costs upon the first suit, now upon this promite upon his account he thall be allowed the same, the which is a benefit unto him: and as to the thewing in what Court the fuit both bepend, that needs not by way of Declaration, but the fame thall be thewed by way of Evidence, and it is not traverlable, and it is but inducement to the action. And as to the covin, that is not here, for covin is always to the prejudice of a third person, but so it is not here: But in truth this suit was unlawful, for Sadler so to sue in the Maine of another, and therefore it cannot be a good confideration. And for that cause, it was awarbed, Quod querens nihil capiat per billam.

1 Cro. 337.

Trin. 31 Eliz. In the Kings Bench.

CCLIV. How and Conneys Case.

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Trespass.
1 Cro. 159.

Is an action of Trespass by How against Conney, the case was, That one Smith was seised of two houses, and leased one of them to his Brother for life, and afterwards by his Will devised, viz. I give to my Executors, Ali my Lands and Tenements free and copy, to hold to them, and they to take the profits of them for ten years, and afterwards to sell the said Lands and Tenements; and afterwards died, his Brother died before the quarter of a year after: and it was found, That the Executors entred into the bouse undemised, and took the profits, but not into the other, and that at the end of the said ten years, they sold the whole. Godfrey, The house only which was in possession, shall pass by the Will. (To hold unto them) both imply matter of possession, so as nothing passeth but that whereof they may take the profits, the which cannot be of a bare Reversion; also by this devise, the Executors have not interest in the thing devised but for ten years, whereas the Brother of the Tessator had an estate for life, which by possibility might continue above twenty years, and to prove that, the meaning of the devisor to be collected upon the words of the Will ought to direct the construction of the Will, he cited Chicks case, 19 Eliz. 357 and 23 Eliz. 371. Dyer. At another day it was argued by Gook, Chat both the Houses pass, and the words (take the profit) do not restrain the general words before, (viz. All my Lands and Tenements) but rather expounds them, see such profits that they might

Plow. 66. Shep, 437. take of a Reversion, cum accideric, for it may be that the Ziother shall bie within ten years. And he cited the case 34 He 6. 6. A man seried of diverse Aeversions upon estates for life, devices them by the name of omnium terrarum & tenementorum, which were in his own hands, and by those parols the Aeversion bid pass; and yet the Reversion (to speak properly) was not in his hands: and if the Brother had died in the life of the devisor, they had clearly passed, and then his death or life shall not after the case. And he resembled the case to the case in 39 E. 3. 21. The King grants to the Abbot of Redding, That in time of vacation the Prior and Donks shall have the disposition of all the possession of the said Abbey adsustance Prior & Monachorum, and if in the time of vacation they shall have the Advonusors, was the question, for it was said. That advonusons could not be to their sustenation: But yet by the better opinion the grant of the King did extend to Advonusors, to it shall be intended such sustenation as Advonusous might give. Godrey, Out Case is not like to the case of 34 H. 6. for there the Devisor had not any thing in possession, and therefore if the Reversion did not pass, the devise should be utterly void. Gawdy conceived that the house in possession passed, and therefore the Evisits might be taken, but here is not any profit of a Reversion. On. Clench, and Way contrary, The intent of the Devise was to perform the Will of his Father, and also of his own Cases; and in case the house in possession was not sufficient to perform both the Cases have largely so as the Cases he devise by savogable construction is to be taken largely, so as the Cases might be throughly performed; and also the devise is general, and surther all his Lands and Tenements, which are not restrained by the Bublequent words (to take the profits;) for to have and to hold, and to have and to take the profits is all one.

Trin. 31 Eliz. In the Kings Bench.

CCLV. Slugge and the Bishop of Landaffs Case.

Court, because where he was presented by the Dean and Chapter or Cloucester to the Church of Penner, the Bishop did resulte to admit him, and now the Bishop sueda Prohibition, and shewed, Quod non habefur talis Rectoria cum cura animarum in eadem diocesi, sed perpetua vicaria. And by Prohibition. Popham a Prohibition doth not lye, but the matter angly to be determined in the Ecclesiastical Court, and when he who is presented to the same Church, whether it be a Church or not, shall be tried in an action of trespals; and the like matter was ruled, Mich. 14. Eliz. betwirt Weston and Grendon, who was presented by the Queen, and it was holden, that because institution and admission do belong to the Ecclesiastical Court, and not to the Kings Court, that no Prohibition should be, and therefore he prayed a Consultation. And note, That the Desendant in the Prohibition did not demur sormally upon the suggestion; for the Iudges use, if the suggestion be mot sufficient to maintain the Prohibition to not not demur sormally upon the suggestion; for the suggestion, if the insufficiency of the Suggestion be manifest; which was granted by the whole Court. Cook, That a Consultation ought not to be granted, for whether there be suggestion be manifest; which was granted by the whole Court. Cook, That a Consultation ought not to be granted, for whether there be suggestion be manifest; which so may granted by the whole Court. Cook, That a Consultation ought not to be granted, for whether there be suggestion be manifest; which so mot suffice, but never accompled in loyal matrimony by the Bishop, Ance. 53. 54.

Quare Impedir, 138. In a Quare Impedir, no such Church within the County. Asterwards, at another day, Popham put the case, Slugge was presented to the vicarioge of Penner, the Bishop resulted to admit him, and admitted one Morgan Bletchen unto the Patsonage

of Penner, at the presentment of the Lord St. John; Slugge sued the Bishop for contumacy, per duplicem querelam, The Bishop sald, Non habetur talis vicaria, upon which matter he sued a Prohibition, and he concessed. That the Prohibition did not ly, for a Aicar is but he that gerit vicem Personx, to supply his place in his absence, so as the same is a spititual matter which ought not to be tried here: Also the libelists dave Admission and Ansistution, and the other matter ariseth by their Plea, sci. Quod Rectoria de Penner est Ecclesia cum cura animarum, absque hoc quod habetur talis Vicaria, and so it is but an incident to the principal matter, where soze it shall be tried there, and he prayed a Consultation. Cook, sald have shewed, That in the time of E. 3. one L. was seised of the Handout of Penner, to which the Church of Penner is appendant; and we alledge presentments from that time, and we convey it to the Lord St. John, which now is, and they would now defeat us by this surmise, That there is no such Church with cure of Souls, which is triable here. Popham the libel doth contain nothing but contumacy in the Bishop, in that he hath not admitted Slugge, and the other matter comes in the Replication, and afterwards by affent of the parties a Consultation was granted, quoad institutionem of Slugge only, but that they should not proceed further.

Pasch. 31 Eliz. Rot. 154. In the Kings Bench.

CCLVI. Fennick and Mitfords Cafe.

More 284. 2 Co. 91. The Cale was, A man leiled of Lands in Fee, levieth a fine to the use of his wife for life, the remainder to the use of his elvest son, ethe heirs males of his body, the Remainder to the use of the right heirs of the Conuso, The Conusor makes a Lease for a thousand years to B. the elvest son vieth without issue male, having issue a daughter, the Conusor vieth, the wife afterwards vieth, the elvest son enters and leaseth the Lands to the Plaintiss. Ackinson, That upon this convepance a Reversion was lest in the Conusor, although by the sine all is conveped out of the Conusor; and so (as it hath been objected) the use limited to the right heirs of the Conusor, is a new thing: For it is to be observed, allhen a man is selsed of Lands, he hath two things, the Land, or the Chate, and secondly the use which is the profits; and if he make a fecosment without consideration, by that the estate and possession passet, but not the use, wherefore the use descends after to the Son and beit. And in our case if the Wise and Son had viet without issue in the life of the Father, all should be in the Father and his Deirs. And is a man make a feosiment in Fee, unto the use of his last Chill, it shall be unto the use of the Feosior and his Deirs, and in our case, this similarion to the Right Deirs of the Conusor is, as if no mention had been made of it, and then it should be to the Father, and his Deirs. And afterwards it was adjudged, That it was a seversion, and no Remainder, and by Gawdy, This Limitation, To his sight Deirs, is meetly void. Wray, As if he had made a feosiment to the use of one for life, without surface Limitation.

Co. Inft. 22. b. Poft. 88.

# Hill. 31 Eliz. Rot. 723. In the Kings Bench.

#### CCLVII. Holland and Franklins Cafe.

Ma Acplevin, the Defendant made Conulans as Balliff to Thomas Replevin. Lozd Howard, and thewed, how that the Pziozcis of Holliwel was feffen Oven 138,139. In the Manoz of Prior in het demelue as of fee, &c. and 4 Nov. 19 H. 8, 2 Len. 121. by Deed enrolled fold unto the Lozd Audley, the faid Manoz, who need babing issue a Daughter, who took to Husband Thomas late Duke of Norfolk, who had issue the faid Lozd Howard, and that after their death the faid Manoz Defcended, &c. Che Plaintiff in bar of the Conufans themed, That the fato Deed was primo deliberatum, 4 Nov. 30 H. 8. And that mean betwirt the date and the delivery, soil. 12 October, The said Priozels leased the said Manor to one A. for ninety nine years, and conveyed the Cerm to the Plaintist, absque hoc; that the Priozels bargant. ed and fold the faid Danos to the Lord Audley, ante dimillionem prædict. dido A. fact. upon which there was a Demurrer. Cook, Chis Aver Averment. ment of another belivery than the Deed both purport against the Deed encolled, hall not be received, no moze than a man map aber, Chat a Recognizance was acknowledged at another day, &c. forevery Record imports a truth in it, and express averment hall not be received against it, but a man may conicfs and aboid; See 7 H.7.4. It cannot be affignebfor Erroz, that in a Acbiffetiin, the Sheriff non accessit ad tenementa, als be hath retoined, for that is against his Retorn which is Accorded, and the date of the Record is the principal part of it, which fee 37 H.6. 21. by all the Juffices, Chat matter of Record hath always relation to the date, and not to the Delivery, contrary of a Deed which is not of Record, for the same shall have relation always to the belivery; and see rozo, toz the tame man have relation always to the belivery; and fee 39 H.6. 32. by all the Julices, averment against a Deed enrolled that Relation of it was not delivered shall not be received; so in the Calebetwirt Liddord and Grenon, 19 Eliz. Plowd. 149. It is holden by all the Justices, That the kings Charter hath relation to the time of the vate, because that matters of Record carry in them by presumition of Law for the high-nels of them, truth, and therefore one cannot say. Chartsuch a Charter was made or delivered at another day, than at that at which it bears date; So of a secognizance, Statute, &c. but against Letters Partents a man may say, Non concessifical perhaps nothing passet thereby, and then it is not contrary to the second. Arkinson contrary, I confess Averment. and then It is not contrary to the Accord. Atkinion contrary, I confeis Averment that the party himself (whose Deed it was) cannot take a direct averment against a Deed enrolled, but he may confess and abeid it, so as be leave it a fecozo, as if a fine were levyed by another in my name of my Land, Jam bound by it; but if the Fine were levred by another in my name I am not bound, for I may confels and about it, and yet leave the Record good; but here the Plaintiff is a franger to his Deed enrolled; And some Accords hall bind all persons, as Certificates of Bassardy, &c. so all may give evidence in such case, 2 H. 5. Estoppel 91. A. makes a feosiment in fee, and afterwards before the Co. 3 Infl. 230, Coroner consessed a felony supposed to done before the Feosiment, 231. the feosice shall have an adequent against it. Egerton the Queens Solicitor, contrary, Matter of Necodo cannot be gainst in the point, or in matter of implication, and therefore against that he cannot sap, Non che factum, 16 E. 3. Abb. 13. A Decd enrolled in pais, cannot be denyed, 24 E 3. 64. A Teed enrolled is not a Record, but a thing recorded, which cannot be denyed. And here this plea is a biolent averment against the Decd, so it amounts to as much as it be been solven as the base of the cannot be denyed. he had faid, Dot his Deed at the time of the encollment; but I canfels that fixed Deed may be aborded by a thing which flands with the Deed by matter out of the Deed. It hath been objected, This this acanowledging of the Deed ought to be made by Actomer,

and therefore made in verson it is not any acknowledgment, and so a. gainft fuch acknowledgment, Non eft factum may be pleaded, and a fine or contession in a Writof annuity upon prescription, or in assis shall bind the house, See 16 E. 3. Abb. 13. Chat a fine, Recognizance, and Covenant of Aecord shall bind the Poule in such case. And the acknowledgment of the Priozess alone will serve in this Case, for the Runs are as dead persons: And posito, that a Waster of the Chancery comes into the Chapter-house, and receives such an acknowledgment, I conceive that it is good enough. It hath been objected, That here the Plaintist is not estopped to take the averment, because we have not pleaded our matter by way of Estoppel; certainly the same needs not here, for the Record it felf carries the Effoppel with it, and the truth appeareth by the Aecold, and the Court ought to take hold of it. Godfrey contrary, A Deed enrolled may be avoided by matter, which is not contrary to the Recold, as 19 R. 2. Estoppel 281. in sur cui in vita, a Aelease of the Hother of the Demandant with warranty was pleaded in Bar, and that enrolled, Co which the Demandant faid, That at the time of the Relegie supposed to be made, our mother had a husband one F. and to the Deed was boid, and to avoided the Deed by matter dehors, fcil. Coverture; fo of enfancy, but not by a general a-berment: A man not lettered thall avoid a Deed enrolled by fuch fpecial matter; fo an obligation made againft the Statute of 23 H.6. and thefe special matters shall utterly about the Deeds against whom thep are pleaded; but in our case we do confess the Deed to be good to some intent, scil. after our Lease expiced, soz which our case is the better case. And at another day it was objected. That the Deed could not be acknowledged without a Letter of Attozney, being a Cozpozation, which consisted upon divers persons, as Oziozels and Covent, and they are alwaies to be intended to be in their Chapter-house, and cannot come into Court to acknowledge a Deed: To which it was answered by Cook, That this acknowledgment being generally pleaded, it shall be intended, that it was done by a Lawful means, and there is no doubt, but that such a Corporation may levy a fine, and make a Letter of Attorney to acknowledge it, and fee, 2 Ma. Fulmerstones case 105. It was further object, Chat this Deed was enrolled the same day that it bear eth bate, for the pleading is per factum suum gerens Datum, 2 Novemb. 29 Hen. 8. et iisdem die & anno irrotulat. And by the Statute such a Deed ought to be enrolled within fix aponths next after the date, fo as the day of the date is excluded, and to it is not enrolled within fix Bonths: As to that it was answered by Cook, That the time of computation both beginpresently after the delivery of the Deed, as in the common Cales of Leales, If a man makes a Leale for years to begin from the day of the date, the same is exclusive; but it it be To have and to hold from the date of the Deed, it shall begin presently. And an Ejectment suppoled the same day is good, and then here, this Enrolment is within the six Bonths; and yet see 5 Eliz. 128. Dyer, Pophams case. It was also objected, That it is alledged in the conusans, Chat the Manoz was sold to the Lord Audley, and that the Deed of Bargain and Sale was acknowledged and enrolled in the Chancery, the faid Lozd being then Lord Chanceloz, and he cannot take an acknowledgment of a Deed, or encolment of it to himself, sor he is the Sole Judge in the said Court, so as the Deed is acknowledged before himself, and enrolled before himself, and that is good enough, sor here we are not upon the common Law, but upon the Statute, and here the words of the Satute are performed. And the enrolment of the Deed is not the substance of the Deed, but the Deed it self. Also the acknowledgment of the Deed, after it is enrolled is not material, sor he is essopped to say that it is not acknowledged. And as to the matter it self, a man shall not have averment against the

's Len. 84.

2 Inft. 674.

Dyer \$20. b.

the purport of a Record, but against the operation of a secord, as not put in view, not comprised, partes ad finem nihil haberunt, &c. And a gainst Letters Pattens of the King, Non concessit, is a good plea, which see 18 Eliz. for by such plea it is agreed, that it is a Record, but that nihil operatur.

Hill. 31 Eliz. In the Kings Bench. Rot. 258.

CCLVIII. Osborn and Kirtons Case.

In Debt upon an Obligation, The Defendant cast a Protection, Debt. upon which the Plaintist dto demur. Tansield, The Protection is not good, for the Defendant is let to Bail, and so is intended always in prison, sor the Record makes mention, and then the Protection quia moratur in portubus Zeland is against the Record, and the Court rought to give credit to Accords especially. Secondly, The words of the Protection. That kirton is imployed in Obsequio notro, which is no cause of protection, sor the usual sorm (and so is the Law) that such a person be imployed in negotio Regni, sor the defence of England, &c. For if the King will give atd unto another Princes Subjects employed in such service, he shall not have Protection. And afterwards variance was objected between the Will and Declaration, and the Protection: sor the Bill is against John Kirton of A. Gentleman, and the Protection is John Kirton only: But the same was holden no such variance being only in the Addition, sor before the Statute 1 H 5. additions were not necessary in any actions.

Mich. 30 Eliz Rot. 156. In the Kings Bench.

CCLIX. Boyton and Andrews Cafe.

Debt upon an Obligation, the Condition was, to make lufficient decided affurance of certain Lands to the Obligee before the tenth day of I Cro. 136. March 17 Eliz. And if it fortune the fair Obligee be unwilling to tecetive, or millike such affurance, but shall make Request to have one hundred pounds for satisfaction thereof, Then if upon such acquest, the Obligation shall be void. And at the day, the Obligee both result the affurance, and afterwards 27 Eliz. request is made to have the hundred pounds. It was the clear opinion of the whole Court, That the said Request was well enough for the time, and he might make it at any time during his life, the is not restrained to make it before the day in which the Assurance is to be made, and afterwards sudgment was given sor the Plaintist.

Mich. 29, & 30 Eliz. Rot. 546. In the Kings Bench.

CCLX. Knight and Savages Cafe.

A curit of Erroz was brought upon a Judgment given in Leicester Error.

A in Debt: Tansield affigued Erroz, because in that Suit there was 2 Cro. 206.

not any plaint, and in all inferioz Courts, the plaint is as the origin-2 Cro. 109.

al at the common Law, and without that no process can issue forth and 8x, 91.

bete upon the Accord nothing is entred but that the Desendant summo-vel. 164.

nitus suit, &c. and therefore the first entry ought to be A. B. queritur adversus, 165.

Post. 302.

25 H

splitting doe to be alway at

Clench, A Plaint ought to be entred befoze process issueth, the summons which is entred here, is not any plaint, and for that cause the Judgment was reversed: It was said, Chataster the Defendant appeared, a Plaint was entred, but it was said by the Court, That that that not mend the matter, for there ought to be a plaint out of which the process that issue, as in the Courts above out of the original write,

Trin. 31 Eliz. In the Kings Bench.

CCLXI. Kirby and Eccles Cafe.

1 Cro. 137.

Is an action upon the Cale the Plaintist declared, Good cum quedam communicatio suisset betwirt the Plaintist, and one Cowper, Chat Cowper should mast certain bogs so the Plaintist, the Desendant of promise, That in consideration, that the Plaintist promised give unto the Desendant three chillings and four pence, so the satting of every dog, That the sald pogs should be redelivered to him well satted; to which promise and warranty, the Plaintist giving saich, delivered to the said Cowper one hundred and sair pogs to be masted; and that one hundred of them were delivered back, but the residue were not: It was moved, That here is not any consideration so which the Desendant should be charged with any promise; but it was argued, on the other side, That the Promise was the cause of the Contract, and being made at the time of the Communication and contract, should charge the Desendant; but if the promise were at another time, it should be otherwise. There was a Case lately betwirt Smith and Edmunds, Two Perchants, being reciprocally endebted the one to the other, agreed betwirt themselves to beliver all their Bills and Bonds into the hands of one Smith, who promised that he would not deliver them to the parties until all accounts were enoed betwirt them; and pet he did beliver them, and so that an action drought against him was adjudged maintainable; yet there was not any consideration, norwas it material, so the action is grounded upon the Deceit, and so is it here, upon the Clarranty: And of that opinion were Clench and Wrey, Justices; but Gawdy was of a contrary opinion.

Hill. 30. Eliz. Rot. 699 In the Kings Bench.

OCLXII. Woodshaw and Fulmerstones Case.

Woodhaw, Etecutor of Heywood, brought Debt upon a Bond against Richard Fulmerstone, and the Carit was dated October Mich. 29 & 30 Eliz. and the Condition of the Bond was, Chat if Fulmerstone died before his Age of one and twenty pears, and before that he had made a Jornture to A. his Calife, Daughter of the Cestator Heywood, Then if the said Defendant caused one hundred pounds to be paped to the said Heywood, within three months after the beath of the said William, that then the Bond should be boid; and the said William Fulmerstone died 30 September 30 Eliz. which matter he is ready, &c. The Plaintist doth traverse, adique hoc, that the said Heywood died intestate. Tanfeld, It appeareth of Record that the Plaintist hath not cause of action, for this one hundred pounds, was to be paid within three Months after the Death of William Fulmerstone, as the Desendant bath alledged, which is also consessed by the Plaintist, and this action is entred Mich. October 30 Eliz. scil. within a month after the death of William Fulmerstone, and so before the Plaintist bath cause of action, and therefore he shall be barred. Gawdy, Where it appeareth to the Court, that the Plaintist be death of William Fulmerstone, and so before the Plaintist bath cause of action, and therefore he shall be barred. Gawdy, Where it appeareth to the Court, that the

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1 Cro. 271, 325, 565.

Plaintiff bath not cause of Action, he shall never have Judgment, as in the Case betwirt Tilly and Wordy, 7 E.4. But here it both appear that the Plaintiff bath cause of Action. for where a man is bound in an obligation, the same is a duty presently, and the condition is but in desobligation. feazance of it, which the Defendant may plead in his discharge.

Trin. 31 Eliz. In the Kings Bench.

CCLXIII. Windham and Sir Edward Cleers Cafe.

Roger Windham brought an Action upon the Case against Six Ed. C. Assion upon declared that the said Ed. being a Justice of Peace in the County the Case of N. and where the Plaintist was a loyal subject, and of good same all sclander, his life time, not ever touched, of reproched with any offence of Rodery, being stife time, not ever touched, of reproched with any offence of Rodery, being stife time, not ever touched, of reproched with any offence of Rodery, being stife time, not ever touched, of reproched with any offence of Rodery, on the October, was alledged in the laid County to arrest the said Maintist and it, was alledged in the said County to arrest the said Maintist and it, was alledged in the said County to arrest the said Maintist was accused before him of the stealing of the holes of A. B. by reason of which the Plaintist was arrested, and to because the Intuity he was never accused thereof, not ever sole such holes; and whereas the Defendant himbers street, we said the particles by reason of which, he was greatly discredited, &c. And it was sound for the Plaintist; and the was moved, that upon this matter an Action dothnot specify a Justice of Peace if he suspended any person of Felony, or other such Diseace may direct his Colarrant to arrest him. 14 H.8.16 Gaudy and Clench, If a man be accused to a Justice of Peace for Felony, for which he directs his subarrant to arrest him, although the accusation be false the Justice of Peace is ercused, but if the party in truth was not accused before the Justice, it is otherwise: It was a Case lately betwiet the Lord Lumley and Foord, where Foord in a setter written by him, had written, It is reported, Chat my Lord Lumley seeketh my life: If it was not Reported, an Action upon the Case lieth, but if reported, no Action lieth: And afterwards in the principal Case, Judgment was given sor the Plaintist.

Trin. 31 Eliz. In the Kings Bench.

CCLXIV. Isleys Case.

Isley and others were Plaintiffs in an Ejectione firme, and upon the general Islue it was found for the Plaintiffs, and 4 days after the verdict given, was moved in stay of judgment a special marter in Law, whereof the Justices were not resolved for the the law, but took advisement and gave day over; and in the mean time one of the Plaintiffs died, which matter the Detendant shewed to the Court in sucther stay of the Judgment: But by Coke, the same is not any cause, for the Poster came in Quindena Pasch. which was 16 Aprilia, at which day the Court ought to have given Judgment presently, but took time to be advised, and the 19 of April, one of the Plaintists died; And the savour of the Court ought not to prejudice us; sor the Judgment here shall have selation to the 16 of April, at which time he was alive; and it was so state adjudged in the Cale of Derick James, who died the day after the verbict, and yet Judgment was not stayed, sor the Court after verbic cannot examine surmises, and they have not a day in Court to plead, and in our case, It was but a day of Grace, and no entry is neade

made of it; Although no plea can be now pleaded after verdia, yet as amicus curix, ohe may inform us of fuch matter: And sometimes in such tale, Indiament hath been slayed, as 9 Eliz. and sometimes not withfranding such Exception, as 2 Eliz. So as I conceive the matter is much in the viscretion of the Instites. And because the same was a hard verdict, and much against the Evidence, It is good discretion upon this matter to say Judgment, and such was the opinion of the Court.

Trin. 21 Eliz. In the Kings Bench.

CCLXV. Steed and Courtneys Cafe.

Error. 1 Cro. 116. Owen 93. good.

ERroz was brought upon a Fine Jevied upon a Plaint in a war of Covenant in the City of Excerer. And two Errozs were uniqued: Owen 93.

More. 691.

Tritt, The Plaint was, quod teneat convent. de duodus tenementis. Ohereas
More. 691.

in truth, the word Tenement both not comprehend any certainty, for
Prescription to in the (Morb Tenement) is understood, Apelluage, Land, Apradom,
levy a fine, not passure, &c. and whatsoever speth in tenure: And 17 H.6.18. by grant
good. of Lands and Tenements, Kent of Common hall pals. And an Example both not lye of a Tenement, not a forcible entry supposed in a Cenement, 17 H. 7.25. & 38 H. 6. 1. Another error was, because the Fine was levyed in the Court of the City of Exceet: Colhich fee 44 E 3.
37, 38. Choic of Exceet can prescribe to have the Countains; but the same ought to be by special Charter of the King by express words. Egerton the Queens Solicito2, who fate under the Julices, and was not of Couniel in the cale laid, Chat he was of Couniel in a tale betwitt Bunbery and Bird, where furth a Fine ledyed in Chester by prescription was in question, was by a Writ of Error reversed: And afterwards in the principal cale the fine was reverted to the first Error.

2 Inft. 515. 1 Roll. 489.

CCEXVI. Trin. 31 Eliz. In the Kings Bench.

Deviles

The Case was this, Standsather, father and Son: The Grandsather selected of a house called the Swan in lpswich, devised the same to his eldest Son for life, the Remainder to A. Son of his eldest Son, and the heirs males of his body, the Asmainder to the right heirs of the Devisor, and to the heirs males of his body, and to the factorists. 1 Cro. 96. 97. ther and Son died without iffue quale, the Son having iffue a Daughter, who entred and afflited the Land unto one Hawes, and covenanted, That the was leifed of the laid wellinge of a certain and lure effate in fee-imple. Godfrey, that the Dalighter thall take the last Remainder, as right heir at the time that it ought to be executed, a to the heirs nales of her body, as if it had been devised to her by her proper Rame, to the both but an estate tail, and so the covenant is broken. Gook contrary: At the time that the devise took essent by the death of the Devised, the Father was his Right heir, so as the Aemainder vested in him inimediately, and hall not expeat in abequace until the Father and Son doe without heir male of the Son, sor the Father is a person able to take, so that upon the death of the Devised, the Father is cenant sortise, the Remainder to the Son, and the heirs males of the Indian. The Father is his body, the Nemainder to the Father in tail or fopra, the Revertion to the Fother in fee, and the Daughter hath the same Neversion by discent after the Entapis spent; all which Wray Justice granted.

Antes 182.

Mich. 31 & 32 Eliz, In the Common Pleas, Intrat. Trin. 31 Eliz, Rot. 1529.

# CCLXVII Galliard and Archers Cafe.

Calliard brought an Action upon the Cale against Archer; The Plaint-Trover and tiss beclared. That he himself was possessed of certain goods, Conversion. which by trover came to the hands of the Defendant, who hash conversion. wered them to his own use: The Petendant pleaded, Chat before the Poster supposed, one A. was possessed by the last goods as of his proper grobs, and sold them to the Defendant, and that he had not any notice that the said goods were the goods of the Plaintist, upon which the Plaintist and demur in Law. And by Anderson the plea is not good, for the Plaintist may chuse to have his Action against the first index, or against any other, which gets the goods after by Sale, Sist, or Crover; and by some, The Desembant having the goods by posses, and the traverse the sinding; See Contr. 27 H. 6. 13. a. And see by some, An detime, where the Plaintist declares of a Bailment, The Desembant may say, That he found them, and traverse the Bailment, and traverse the Bailment, and traverse the Bailment, and the Postendant may say, That he found them, and traverse the Bailment, and the Postendant may traverse the property of the goods in the Plaintist, say, the property of the goods in the Plaintist, say, the property of the goods in the Plaintist, say, the Alliard brought an Action upon the Cale againft Archer; The Plain- Trover and

Mich. 31 &32 Eliz. In the Common Pleas.

# CCLXVIII. Edwards and Tedbuties Cafe.

Edwards of London was endebted unte one A of the fame Aitp, and Bailment of Exceter, who goods to a went to him to carry for him certain Maris to be farried to Exceter, to Carrier certain Tradelmen there, the faid goods to be delivered to them, ecc. and to the faid goods, Wares, and Werchandizes, being in the policifion of the Defendant Tedbury to be carried to Exceter, the faid A. caufen them to be attached in the hands of the laid Carrier, for the Bebt of the laid Edwards, The laid Carrier being then published in the Tomemon Pleas, by realon of an Action there depending. And by the clear opinion of the whole Court, the laid Attachment ought to be displayed. Attachment of the Carrier for the realon aforelaid is priviled and by passion, goods, and not only in his own goods, whereaf the property belongs to him, but also in such goods in his postetion for which he is and not only in the own goods, whereaf the property belongs to him, but also in such goods in his postetion for which he is and so that a there were also in the magadunater. animerable to others, &c. And fo it was adjudged.

Mich. 31 & 32 Eliz. In the Common Pleas.

# OCLXIX. Cockshal, and the Mayor, &c. of Boaltons Case.

I Tenry Cockshal brought an Action upon the case against the Haya, Compray Town Clark, and Goalog of Boakon, in the County of L. and decireto, Chat where he himself had affirmed a Plaint of Debt in the Court of the said Count, before the said Wayog, &c. against 1.5. and thereupon had caused the said 1.5. to be arrested, The said Defoupants did conspire together to delay the Plaintist of his said suit, in peril of his Debt, had let the said 1.5. go at large without taking Bail. Perim Justice conceived, That upon that matter, the Action doth not specific to grant the said is a judicial an, for which be shall not be impeached: But all the other Instices were strongly of opinion against him, for the not taking of Bail is not the cause of the Action, but the Consoracy. but the Conspiracy. Mich.

# Mich. 31 & 32 Eliz. In the Common Pleas.

### CCLXX. Erbery and Lattons Cafe.

1 And. 234.

In a Replevin, The Defendant both abow because he is seiser of such a Banoz within which there is a Custom, That the greater part of the Tenants at any Court within the said Banoz holden appearing may make By-laws, for the most profit and best government of the Tenants of the said Wanoz, &c. and that such By-laws should hind all Tenants, &c. and shewed surther, That at such a Court hole en within the said Wanoz the Pomage there, being the greater part of Tenants of the Pannoz aforesaid, at the Court aforesaid appearing, made this By-law, silicer, That no Tenant of the said Wanoz should put into such a Common any Steer being a year old or more, upon pain of six pence soz every such Offence, and that it should be lawful to distreyn sor the same: And the Court was Clear of opinion, That the By-law was utterly void, for it is against Common Kight, where a man hath Common sor all his Cattel Commonable, to restrain him to one kind of Cattel, &c. But if the By-law had bin, That noneshould put in his Cattel before such a day, the same had bin good, sor such By-law both not take away, but order the Inheritance; for the nature of a By-law is to put Order betwirt the Tenants concerning their affares within the Wanoz which by law they are not compellable to do: And by Periam, The Adowant nught to have averred, That this By-law was for the Common profit of the Tenants: See the Lord Cromwells Case. 15 Eliz. Dyer 322. and afterwards in the Printipal Case, Judgment was given against the Adowant.

Mich. 31 & 32 Eliz. In the Common Pleas.

CILXXI. Wicks and Dennis Cafe.

Replevin.

Whis father was seised of the Manoz, &c. and granted out of it to the adowant a Rent of twenty pounds per annum, and sutther granted, That if the said Rent be arrear unpaid six days after the feasts, &c. wherein it ought to be paid, si licite petatur, That then it should be lawful to distrein; The grantor afterward by Indenture Covenanted with the Lord Treasurer and others, to stand seised of the same Manoz, unto the use of himself and his heirs, until he or his heirs have made default in they payment of one hundred pounds per annum, until three thousand pounds be paid, and after default of payment, to the use of the Queen and her heirs, until the sum of three thousand pounds should be paid and levied; The grantor afterwards sevied a sine to the said Lord Treasurer and others to the uses aforesaid, the sent is arreat; default of the payment of the hundred pounds in made, Office is sound, The Queen seised the land, the Avowand during the possession of the Queen surface the same to the same the same to the same over the Manor to W. & B. & D. the grantee did distrain for the rent, & arrearages demanded, us supra. It was moved by H. Secteant That this demand of several sums payable at several days before, is not good; for every sum ought to be severally demanded when it was sirst due, scil. Si siese petatur, scil within the six days; sor otherwise without such demand, distress is not lawful, and he resembled it to the case of Six Thomas Gresham 23. Elizabeth Dyer, 372 of several Tenders. Periam concessived

conceived that the demand ought to be several. Anderson, That the demand is good enough. And as to the demand made during the possession of the Queen, It was holden by the whole Court to be good enough; for although the possession of the Queen be priviledged, as to the distress, yet the demand is good, without any wrong to her present rogative; for the Kent in right is due, and the possession of the Queen Rent charge is in right charged with it, and the Kent is only recoverable by Pett, during the tion, as it was by way of distress; and if the partie suith to the possession of Queen by Petition for the said Rent, beought to them in his Petition, the King; that he hath demanded the Kent, for if the possession had bin in a common person, he could not distreyn before demand, nor by consequence have Assisted and papable for to entitle the party unto the Queen, is demandable and papable for to entitle the party unto petition against the Aueen, and to distress against the subject when the possession of the Queen is removed. And see 7 H. 6. 40. district may make continual claym, although the possession of the Land of which he is districted be in the King. And 34 H. Br. seisin 48. If the peter at sull age intrude upon the possession of the King, and paps Kent to the Lord of his Land holden of a subject, the same is a good seisin, and shall bind the heir after he hath sued his livery & E.4.4 and see 13 H.7.15. That distress taken upon the possession of the King is not lawful, but seisin obtained during it, is good. So since H.7.2.

Mich. 31, & 32 Eliz. In the Com. Pleas. Int. M. 30 & 31. Rot. 458.

CCLXXII. Ashegells and Dennis Case."

A Shegel brought a Quare Impedit against Dennis, and the Plaintst Quare Impedit.

Counted that the Defendant had disturbed him to present advir 1 Cro. 163.

cariam de D. and shewed that the Queen was seised of the stenory of D. Hob. 304.

and of the Addownson of the vicartoge of D. and by her letters Patents gave unto the Plaintst Rectoriam predictam cum pertinentis, & eriam vicariam Ecclesia predict. And it was holden by the whole Court, Chat the Addownson of the bicartoge by these words both not pass; nor so in the Case of a common person, much less in the Case of the King:

But if the Queen had granted Ecclesiam suam of D. then, by Walmestey Instice, the Addownson of the bicartoge had passed.

Mich. 31, & 32 Eliz. In the Common Pleas.

CCLXXIII. Collman and Sir Hugh Portmans Case.

In Ejectione firms by Collman against Six Hugh Portman it was found by Ejectione firms special verbit, "Chat the lands where were holden by Copy of the Yearn of D. whereof Six H. Portman, was sessed, and that the Plaintiff was Copyholder in Fee, and further found, That the said Six H. wetending the said Copy hold lands to be softeited, entred into Surender of Communication with Collman touching the same, upon which Composition in was agreed betwire them, That the said Collman should pay to the said Six Hugh side pounds, which was paid accordingly, a that in consideration thereof, Collman should enjoy the said Customary lands, except one solved combwood for his life, and also of Alice his wife, durante six viduitate, and that Collman should have Election whether the said lands should be assured unto him and his said wife by Copy, or by Bill, &c. a he chose by Bill, which was made accordingly; and sutther sound, Chat the said Six H. held and enjoyed in his possition the said stood, &c. a upon this matter, The Court was clear in opinion, Chat here is a good surrender of the said lands, and that for life only, and that the said Six Hugh had the Glood discharged of the cultomary interest.

Trivilians Case. Thetfords Cafe. Mich. 31, & 32 Eliz. In the Common Pleas. CCLXXIV. Therford and Therfords Cafe. In an action of Debt for Rent, the Plaintiff veclared, Char Land was given to him, and to T. his wife, and to the beirs of their voices, and that his wife leased the Lands to the Defendant, and that the Donees were vead, and that the Plaintiff as their, &c. for tent artear, &c. and upon Non demiserunt, the Aury found that the Pushand and Wife demiserunt, by Indenture, and afterwards the husband died, and the wife entred, and within the term vied: Now upon the matter it feemed clear to Anderson, that the Aury have found sor the Defendant, soil. Non demiserunt, sor it is now no lease ab initio, because the Plaintiff hath not veclared upon a Deed. 1 Ma. Dyer 91 and also the wife by her disagreement to it, and the occupation of the Land after the death of her Dusband, both made it the Lease of the Dusband only. Hutt. 102. Dy. 91. 1 Co. 61. of her Dusband, bath made it the Leale of the Dusband only. Mich. 31, & 32 Eliz. In the Common Pleas. 13 17.15 CCLXXV. Rockwood and Rockwoods Cafe. Assumption IN an Action upon the cale, the cale was this. The Father of the incending to make his Alill, In the presence of both his Sons the Plaintist and Defendant, declared his meaning to be, To devise to the Plaintist his pounger Son a Rent of 4 l. per annum, for the term of his life out of his Lands, and the Desendant being the eldest Son (the intention of his Lands, and the Desendant being the eldest Son (the Affumpht. I Cro. 163. . intention of his kather being to charge the Land with the fair Rent) officeed to his kather and Brother, Chat if the kather would papet to charge the Land with the fair Kent, he promifed he would papethe 4.1, pearly to his Brother during the life of his Brother, according to the intention of his laid kather, Albertupon the kather asked the Plaintiff if he would accept of the offer and promite of his Brother : who animered, he would; whereupon the Father relying upon the promite of his faid elvest Son, forboze to devile the faid Kent, &c. so as the Land descended to the Civest Son discharged of the Rent: and the opinion of the whole Court in this case was clear, that upon the whole matter the action ord well lye. Mich. 31, & 32 Eliz. In the Common Pleas. OCLXXVI. Petty and Trivilians Cafe. . Livery of lian, and upon especial beroin Deliberance against William Trivifeism.

Livery of lian, and upon especial beroin the case was, Chat A was seised of certain Land, and Leased the same so pears, and afterwards made a Deed of Feosiment unto B. and a Letter of Attorney to the Tessee, C and D. conjunctim vel divisim in omnia & singula terras et Tenements intrare et seisman inde, &c. secundum forman Chartz, &c. Lessee so; pears by himself makes Asvers and leiss in one part of the Land, and C in a nother part, and D. by himself in another part; It was sire agreed by the Justices, that by that Libery by Lessee so; pears his success and Term is not determined, so; whatsoever he both, he both it as an Officer, o) Servantia the Tesso; Secondly, It was agreed, That these several Libertes were good and warranted by the Letter

Petty and

Rockwood and

Rockwoods Cafe. S

Thetford and

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of Attorney, especially by reason of these words, In omnia & singula, &c. So as all of them, and every of them might enter and make Libery in any and every part. And fo it was abjudged.

Mich. 31 &32 Eliz. In the Common Pleas.

CCLXXVII. Rigden and Palmers Cafe.

R Igden brought a Replevin against Palmer, who avomed to bamage Replevin. feasant in his freehold: The Plaintist said, That long time bestope that Palmer had any thing, he himself was sessed, until by A. B. and Avowry. tote that Palmer had any thing, he himself was seised, until by A. B. and C dissisted, against whom he decought an Asiste, and tecovered, and the estate of the Plaintiss was mean between the Asiste, and the recovery in it: The Desendant satd. That long time before the Plaintiss had any thing, One Grissich was seised, and did enseos him; absque hoc, that the laid A. B. and C. vel corum aliquis aliquid habuere in the Lands, at the time of the Aecovery. Walmsey Justice was of opinion, That the Bar unto the Avowey, was not good, so that the Plaintiss hat the War alledged, That A.B. and C. Ter-Tenants tempore recoperations, and that ought to be shewed in every recovery, where it is pleased. And then when the Desendant traverseth that which is not alledged it is not good. Windham contrary: For the Asis might be brought against others as well as the Tenants; as against discisors: But other real actions ought to be drought against the Tex-Tenants at the time of the Aecovery; and also the traverse here is well enough: Another Exception was taken, because the Avowey is, That the place in which, on tenethed at 100 Acres of Land, The Plaintiss in bar of the Avowey saith, that the place in which, &c. conteins 35 Acres, &c. but that Essatish, that the place in which, &c. conteins 35 Acres, &c. but that Essatish, that the place in which, &c. conteins 35 Acres, &c. but that faith, that the place in which, &c. conteins 35 Acres, &c. but that Exception was not allowed, for it is but matter of form, at is believ by the Statute of 27 Eliz. Another Exception was taken, as to the bundled of Cattel, and both not thew in certain, if they were Eves, or Lambs, or how many of each: which allo was vicaliowed, for the Sheriff upon Returns habendo may enquire what cattel they were in certain, and so by such means the Avoncy hall be reduced to certainty. 01 Sty. 71.264

Mich. 31 & 32 Eliz. In the Exchequer Chamber

CCLXXVIII. Ruffell and Prats Cafe.

Rufell brought an action upon the case against Prat, and declared, That certain goods of the Cestator casually came to the Defen-That certain goods of the Cestato; calually came to the Defendents bands; and upon matter in Law Judgment was given for error, the Plaintist, sed quia nessitur quæ damna, sec. Ideo a writ of Enquiry of Damages islued, and now Prat drought a Arit of Error, in the Errhequer Chamberupon the Statute of 27 Eliz. cap. 8. But note, That the Judgment was given desore the said Statute, but the Arit of Enquiquity of Damages was retorned after the said Statute, the said Statute of the squiry of Damages was retorned after the said Statute, the said Statute of the same model, Chat the said Judgment is not to be examined here; but by the clear opinion of Anderson, Manwood, Windham, Walnessey, Gent, and Clark, Judices of the Common Pleas, and Barons of the Erchequer, the Arit of Error iveth here by the Statute, so in an action of Crespals (as this case is) full judgment is not sider amount if the Carit of damages be retorned; And it before the Reson of it amy of the parties dieth, the Writ shall abate: and the side Ludgment which is given before Award of the Carit is not properly a Judgment which is given before Award of the Carit is not properly a Judgment but rather a stule, and order, and so in a calitic of accompt, where

Judament is given that the Defendant computer cum querente, he thail not have Erroz upon that matter, foz it is not a full Judgment. See 2.1 E.3.9. So as to the Judgment in a Writ of Crespals, sci. That no Writ of Erroz lyeth before the second Judgment after the Keturn of the Writ of Enquiry of Damages are given: And also it was holden by all the said Justices and Barons, That an Executor shall bade an action upon the cale de bonis testatoris, calually come to the hands and possession of another, and by him converted to his own use in the life of the Cestato2, and that by the Equity of the Statute of 4 E 3. 7. de bonis afportatis in vita Testatoris.

Action, de bonis Teftatoris.

Mich. 31 &32 Eliz. In the Common Pleas.

CCLXXVIII. Arrundel and the Bishop of Gloucesters, and Chaffins Cafe.

Quare Impedit. Clit John Arrundel brought a Quare Impedit against the Bishop of Glouoefter, and Chaffin, and counted upona diffurbance to prefent i No vembris. Chaffin, as incumbent pleaded, That 1 Maii next after the faid 1 Novemb. he himself was presented to the Church by the Queen, the presentment to the said Church being devolved unto her by Laple. Apon which the Plaints of demur in Law: And the plea was holden intufficient, for the Plaintiff counted upon a Disturbance to him i Novem and the Defendant entitleth himself to an incumbency i May the Queen is once executed, and so gon, and nothing remains in the Queen, and now when the Defendant hath lost his incumbency by ill pleading (as he may) as well as by Relignation of Depitvation, yet the same thall not turn to the advantage of the Queen, for where the Queen prefents for laps, and her Clark is instituted and inducted, the Queen bath no more to bo, but the Incumbent must shift as well as he can for the holding of it, for by what manner to ever he lofeth his incumbency the Queen thall not prefent again; otherwise it had been, if the Queen be Patron, and afterwards the Plaintist had a Wirit to the Bilhap.

Writ to the Bifhop.

Mich. 31 & 32 Eliz. In the Exchequer Chamber.

CCLXXIX. The Lord Pagets Case, in a Monstrans de Droit, The Cafe was.

More 193,194 1 Co. 154. 1 And.259.

Homas 1020 Paget, father of William Paget, was lefted of the 99an not of Burfton, and divers other Hannors in three leverel Counties in his bemeine as of fee, and to feifed by Indentuce, between the faid Lord of the one part, and Trentham and others on the other part, and inconfluentation that the faid Trentham and others, with the profits of the fail Trentham and others, with the profits of the last Mannois hould pap his bebts, and such tums of money which were contained in such a Schedule, and which be should appoint by his last chill, covenanted to stand lested of the saturation

to the use of the said Trentham of one Eusal, &c. for the term of four and twenty pears, and after the Expiration or end of the said Cerm of twenty four pears, unto the use of the said William Pager, his Son in tail, with diverte Remainders over: And afterwards the fato Lozd Pager was attainted of high Treason. It was here holden and agreed by all the Justices, and by the Council of both sides. Chat the uses limited to Trentham, and others are void, for here is not any commercation sufficient to raise an use, for the mony which is appointed by the payment uses of his debts is to be raised of the profits of the Lands of the land Lozd, which is not any consideration on the part of Trentham and others: But if the consideration had been. That they with the Edosfits of their since if the consideration had been, That they with the Profits of their own Lands should pay the debts, &c. It had been a good Consideration: It was agreed also, Chat the term for twenty four years to Eukl is bold was agreed allo, That the term for twenty four years to Eulal is both for want of Austrient confideration: And then it was moved, If this Leafe being void, The vie limited to the laid William Paget, Son of the faid Lord Paget should begin presently upon the death of the Lord Paget, or should expect until the twenty four years were encurred after the death of the Lord Paget, or not at all. And it was argued. That an use to be raised upon an impossibility should never rise, as if I covenant to stand seised to the use of B. and his peirs, after the end of the term soft pears, which I. S. bath in the Hannor of D. whereas in truth, I. S. bath not any vie cannot rise term in it, the said use shall never rise: so here, No vie to the Son can out of a passibirise, so the lease for twenty four years shall never end, so it never can like, begin for want of sufficient consideration as is asozefalds and if the said was to fail the laid. ule in tail thould at all rile, it thould not rile before the expiration of the laid twenty four years. As if I covenant to fland leifed of certain Lands to pour ule when my Son and Veir than come to the age of one and twenty years, now if my Son dieth before fuch age, The ule half not begin before the time in which my Son (if he thail live) hould actain under the force of the come of th to his faid age. Egerton the Queens Solicitor, lifes may be limited to begin at times certain befoze which they had not begin: and o in our cale, the use in tail is limited to begin when the term of twenty four years, is ended, and therefoze until the Cerm be ended as use thail cise: and the use is limited to rise upon the end of the time dy term of sour a treatment never and not then the contract of the time dy term of sour a twenty peacs, and not upon the end of the efface, and so William Paget hath begun his Monstrans de Droit befoze his time: The Logo Paget hat but an efface soy life; and if so, Then the Kemaindets are not continggent uses, but best presently: as if a man covenant, That after his death his Don and Heir hall have his Lands, now the Father hath but an estate for life, and the inheritance is vessed in the Dan. Cook, Jedvenant. That after twenty source water and the Dan Cook, I soverchate for life, and the inheritance is bestev in the Son. Cook, I sovenant, Chat after twenty sour years ended, I and my Veirs will know seised to the use of my Son, see there the use in Fee doth best in my Son presently: So I covenant, Chat after my beath, I and every one who hall be seised, see shall be seised of the said Land to the use of my Brother, the said use shall tile to my Brother presently: I bedie. Chat after the death of such a Monk, I.S. shall have the Land, nothing vallety to I.S. till the death of the Monk; but it Cand be desired to a Monk for life, and afterwards to another in Fee, the Devisee in Fre shall have the Land presently. Manwood, A devise of use limited to one for life, the Remainder to the presently. Manwood, I devise both disagree. Cook, the Aemainder doth dest presently. Manwood, I devise both dest presently. Manwood, I devise lands unto one until my Son comes of sull age. Cook, The remainder both best presently. Manwood, I devise lands unto one until my Son comes of sull age. Cook, The remainder both best presently. Manw. A use limited to one to degin at Mich. next, the remainder over, it is the mean time the Lesse obtain the good will of I.S. which he cannot obtain, the same remainder is not good. Anoth one covenant to sand titled to the use of Salidury plain, so the life of I. S. und after the remainder to A. It is a plain case, Chat he in the remainder shall take presently, 37 H. 6.

36. Cessay que use willed, Chat his feastes should make an estate to A. Top life, the remainder to C. In see, a A would not take the estate, C. shall have

have a Subpona against the Feoffees after the death of A. See there the cale; and if Land devileable, be deviled to one for life, the Remainder over to another in fee, and the Device for life doth refule; Quære, if the

Devisee in Remainder thallenter presently, Dee Firz Subpoena; And also the put the Case, where Land is devised to a Bonk for life, the Remainder over to another in fre, be in the Remainder thall enter present. lp, fee the fame Cafe in Perkins 108, for the Monk never took any thing by the devile, a notwithstanding that there is not any particular estate upon which a Remainder can depend, yet the intent of the Deviloz shall be observed in as muchas it may, and the particular estate limited to the Ponk is meetly void, of which every stranger shall take advantage, &c. And it was resembled to a Case in Baintons Case, where an use in Aemainder limited upon good confideration shall be good in Law, although the particular use be not grounded upon good consideration, & so faileth: And he urged a Cale alleadged by Popham in the Cale of the Earl of Bedford, that if in Cranmers Cale, the estate for years limited to the Executors, had been limited to Administrators, it had been meerly volv, and the use in tail limited in tail should begin presently, E that was by reason of the interval betwirt the death of Cranmer, & the taking of the Letters of Administration, in which mean time there is not any person capable, and therefoze the Remainder shall best presently, which is a fit case to prove the Case at Bar: And he remembred that in the Argument of Cranmers Cale, Lovelace Serieant, would have an Decupancy in the Case of such a Term limited to Administrators, quod omnes Justiciarii negaverunt: and in the lato Cale of Cranmer, it was holden that the Leafe for years being void, the estate in the Asmainder did begin prefently, without expecting the estlucion of the years, &c. And truly, a Cerm imports in it felf an Interest, but if the limitation had been after the Cerm of twenty four years,&c the same implyeth but a bare time: And to that purpole he cited the Cale 35 H.S.Br. Exposition,44. A. Leafeth to B. for ten years, sit is covenanted vetwirt them, that it B. pay unto A. within the faid ten years one hundred pounds, that then he shall be feifed to the use of B. in fee, B. furrenders his Term to A. and within

Popham Attorney General Contrary, The use thall not go beyond the Contract, there the Term both not belt, in that it was Limited for want of lufficient confideration, of the Lord Paget, at the intent was not that his fon thould have postession of the land before the term of 24 years expired.

the faid ten years pays the one bundled pounds to A. here B. Mail have Fee, for the years are certain; contrary, if the Covenant had been, If he pay within the Cerm.

A ule is a thing in Conscience, according to considence to be guided by the intent of the parties: eupon such Case at the Common Law W. Pager thould not have a Subpoena before the years expired, and this word (Cerm) both not alter the Cale; and there is a great difference betwirt an use raised by feofiment and anuse raised by Covenant, for in the first cale the feffor both diposless himself utterly, tis it takes not effect to one purpose it shall take effect to another purpose: But in the Case of a Covenant it is otherwise, for the use riseth according to the contract anot otherwife, there the Contract is, That W. Paget thall have the Land not

otherwise, there the Contract is, That W. Pagethall have the Land not immediatly after the death of his father, but after the 24 years expire.

Owen Serjeant, It hath been agreed of both sides, That every use thalf go according to the intent of the parties, and here it appeareth, That it was the intent of the Nord Paget, to put all the use out of himfelf, and I see not any difference betwirt an use raised by Covenant and a use taised by feosiment. For a use limited urroyis mode to Pauls Steeple sor the life of A. and after to the use of B. in fee, the first use is both, but the second good; and here the meaning of the Lord Paget plainly appears, for there is a Proviso in the Indenture, That after the last debts and legacies paid, the use limited for 24 years shall cease, and it

2 Les. 5. 6.

Use what it is.

it is expedily aberred, that they are paid 11. H. 4. A. leafeth for life, the remainder in tail to himfelf, the Remainder over to a franger in fee, the mean Remainder limited by A. to himself is void, and the remainder over thall be immediate to the estate for life. Egerton, The words of the Indenture, and the intent of the parties are the rules of ules, The first use is boid, for the intent of the Lord Pager was boid, because contrary to the Law, and Eufal, to whom the ule for years was limited, could not take prefently, for his estate is limited to begin after the beath of the Lord Pager, and there is a great difference betwirt uses raised by Covenant, and by Feosment, For when a use is raised by Feosment, there all is out of the Feosfor, the land is gone, the use is gone, the trust is gone, nothing remaineth but a bare authority to raise uses out of the possession of the Feosfees, a being new uses, there although some of them be void, pet the other shall stand; but where a use is ratfed by way of Covenant there the covenantog continues in possession, there the uses timited, if they be according to Law, shall raile a draw the possession out of him, but if not, the possession shall remain in him, until a lawful use thall arise, which before its time thall not rise for any befeat in the precedent use. And here is no Cerm, therefore no end, for that which hath not a begining hath no ending, And if there be no estate, then no Cerm, the there be so, then it is to be taken for the time of 24. years, which is not as yet expired, and then was there in the Lord Pawlet an effate descendable for 24 years, which by the Attainder doth accrue unto the Queen. And he cited the Case of 13 Eliz. Dyer. 300. Feoffment to the use of himself for life, and afterwards to the use of a wo-man which he entendeth to marry, until the issue which he should beget on the said woman should come unto the age of 21. years, and then to the use of the woman during her widow-hood; They are married, the Dusband dieth without issue, the White thall hold the land: But by him, if this use had bin raised by way of Covenant it should be otherwise. Coke Admit that all the uses be good, vet his meaning was, That the debts and legacies being paid W. Pager should have his land, for it is provided by the Inventure, Chat when the bebts & legacies are paid, the effate for 24. years thall cease. Manwood, The payment of the bebts cannot end that which never was, and as to the two first estates, they were never out of him, therefore they came unto the A. by his attainder. Coke, After bebts and legacies paid all other estates but the estate of W. Pager cease, therefore William Paget fall have the Land. and the rule of Shelly 35 H.8.56 is worthy to be received, soil. That learning is hones, & withed to be used, that every man learned in the Law, do construe Deeds according to the meanings of the makers. Manwood, \*\* Feosiment to the use of Salisbury Plain forthe life of 1. S. the Remainder over, the same use shall come into possession presently, for there is not any person capable of the particular estate, but where the first use is limited to a Bastard, the remainder over, there, the Aemainder thall not come into possession presently, for the Bastard is a person capable, but not by such form of conveyance in consideration of natural affection. Popham, In the case of Baffard, there was an effate for life executed to the father in polletion, Saliato, there was all eliate to interest ever and the Sons lawfully begotten; but here in our Case no estate is created to precede the estate of William Pager, upon which the Remainder can depend.

At another day, It was argued by Coke, It is to be agreed on both sides, That the estate for four and twenty pears is meetly void and the fact of the country pears is meetly void and the fact of the country pears is meetly void and the country pears in the

At another day, It was argued by Coke, It is to be agreed on both wees, Chat the effate for four and twenty years is meetly void and also the first use limited to Trentham and others, and it is not reason, that the use limited to William Paget, should expect until the four and twenty years be expired by effluxion of time, and to that purpose he cited Cranmers Case, where an effate in use was limited to Cranmer so, life, the Aemainder to his Creeutors for one and twenty years, the Aemainder over in tail to his Son

and beit,&c. Cranmer is attainted of Treason and berely, so as he could not make a Will, or Executors, there it is holden, Chat the term is void, because no Executors, and that the Remainder in use thousa west presently, and hould not expect until the said number of years expire by efflution of time. And difference hath been put betwirt the case of Cranmer, and the Case at Bar, because in Cranmers Case there was a possibility at the beginning that the Cerm for years might be good, for the term became void by matter expost facts, so. By the attainder of him, which disabled him to make Executors, but in the Case at Bar, the term for twenty four years was expectly voidab initio: But that difference is without reason, for what reason is there, That the Kemainder should be father off the possession when the estate so, years is originally void, than when it becomes void by matter expost facto? Suppose that the Told Paget had by Indenture covenanted as above for the two first uses, (being in truth void in Law) and afterwards by another Indenture, reciting, That whereas he had covenanted, That in consideration That A. with the profits of his Lands should pay his debts, &c. to stand fei fed of the fair Lands for his own life: Row he covenants, to fland fel-fed to the use of William Paget, and his veirs, should not he presently be selfed to the use of William Paget, and his veirs, although the words be, That then and from thenseforth? For I hold it a clear case, that his estate begins presently, being limited, to begin upon a void estate, although the support of the limited of the state of the support of the limitation be by words de futuro. And to this purpole he cited the cale 3 E.6.Br.Leafe 62. A man leafeth for years, Habendum post dimissionem inde fact. to J.S. finitam, where no such demise is made, the same Teafe shall begin prefently: If an Indenture be made to a Bonk, and another, Habend. to the Wonk for one and twenty years, and after the end of that, to the other for one and twenty years, the other hall have it prefently. And he put a Cale 7 E.3. in the new Impression 19. and in the old Impression 317. Albert one Maud hought a Formedon in the Remainder, and counted that one Hamond was felled, and gave the said Tenements to one Robert, &c. in tail, and that for want of fuch iffue, that the Tenements thould return to the laid Hamond for life, the Remainder to the Demandant in Fee, and counted further. That Robert is dead without issue, and that Hamond is also dead, &c. It was holden, although that the Kemainder referved to the Donor, be vood, yet the Remainder over in Fee is good,&c. And in that cale although that the Aemainder in fee was future, ic. After the death of Hamond, & the effate referved to Hamond Meer-ly void, & that oxiginally, & not by matter ex post facts, yet the Aemain-der in Fee was good, and should begin presently upon the death of Ro-bert without issue, and should not expect the death of Hamond. Dr. Attorney hath given a Aule, That the intent of the parties is the Direction of ules, as also of Wills, and therefore I will put one Case of Wills, 37 H.6.17. If a man devise Lands to a Monk for four and twenty pears, and after the same ended to another in fee, here the Monk being a dead person cannot take the estate limited to him, a therefore it is void: but the fee limited to the other is good, and shall take effea presently: If it be so in a Will, why not so also in uses? For the intents of the parties do direct the constructions of both: And our case here is a fironger case than the case cited 37 H. 6. 36. for there where Land is devised to a Monk for life, there may be calour of an Occupant during the life of the Bonk, who might take it, although the Wonk himself cannot take it, and so the Remainder both not take effect presently as to the possession, but shall stay till after the death of the Wonk; But here is not any colour of an Occupancy, for the effate here is a Leafe for peats, which cannot admit an Occupant. And see also 37 H.6. 36. If a man device that his frostees wall make an effate to 1.8. for life, the Remainder over to C. in Fee, and 1.8. will not take his effate, C. chall

have a Sub-popa against the feoffees to make an estate to him, leaving out 1. S. and see Amy Townsends Case in the Commentaries, where the bushand seised in the Right of his Wife, makes a Feofiment in Fee to the use of himself, and his wife so, their lives, the Memainten over to another; the husband dyeth, the wife resulted the limited to her by the Busband, the brings sur cui in view, not against the hetr, but against him in the Remainder, to whom the Land both accrue by the resulal of the wife; not against the heir of the Feostor, and I grant, Chat where an estate in ule, or otherwise is to begin upon a condition precedent which is impossible, or against the Law, the estate shall never rise or begin. And here the Case of the Lord Borroughs, 35 H. 8. Dy. 55. was cited, Albere the Father covenanted in consideration of marriage of his Son, that immediately after his death his eldeft Son fail, have the possession of all his Lands according to the same course of inheritance, as then they flood, and that all persons now fessed, or to be seiled, should be seised to the said use and intent, and it was holden, That upon that matter no use is changed: But if the Words had bin Immediately after his death, they hould remain, then although the words of the Limitation be in futuro, the use of the fee shall rest in the Son presently; and the words in futuro ought not to be interpreted, but in benefit of him to whom the use, and estate is limited, 9 Eliz. Dyer. 261. A. Lealeth for thirty years, and four years after the beginning of the last term he makes another Leale for years by these words, Nogerint, &c. dictis 30 amis finitis & completis, demilisse omnia præmissa, to the fato, &c. Habendum & tenendum a die consectionis præsentium, termino prædict sinito, usque ad finem 30 annorum. And by the opinion of all the Justices, This new Leafe thall commence in possession at the end of the former term and not before and if it thould not be expounded, the fecond Leafe thouth be in effect an effate; but for ten years, which was not the intent of the parties, and every grant chall be expounded most frongly for the grantee, and to his advantage, to which purpose he said he had vouched this Cale. Also by him there is not any difference, where the use is limited by way of covenant, or upon a Feofiment: And if a man enfeoffeth B, upon condition that he shall enfeoff Cnow if he offer to enfeoff C and he resuleth, the feoffor may resenter. But if the condition were to give to C in tail, then upon such refusal of C. the feoffor shall not reenter. See 2 E.42. 19 H.6. 34 E & Equitas fix adhibends in construction of conditions a multo fortion in case of allest 2 feoffment in See 2 and 10 feoffment in See 2 feoff of conditions a multo fortiori in case of Ales: A feofiment in Feeupon condition, that the feofice shall grant a Kent charge to I. S. who noth it, but I. S. refuseth, the feoficy shall not re-enter, for that was not the intent of the condition: If in the principal case, the limitation of the post. 266. the intent of the condition: It in the principal cale, the limitation of the following the hab been after the expiration of twenty four years, then no use thought rise before the twenty four years expire, but where, not the time, wit the estate is material, there, if the estate be void, the use shall go to bint in the Remainder presently, and shall not stay the time, &c. 1 Co. 154. Egerton Solicitor, first it is to see, if the use limited to William Pager be good, secondly, if William Pager both not come before his time to shew his flight: If this use similared to WilliamPager be a Remainder of an estate to begin upon a contingent, of a present estate, the estates somethy limited being void, and he conceived, that it is not a semainderstorthere is not any efface upon which it may depend and the words are after the effate for twenty four years ended or expired, that then and from thenceforth to the use of William Paget, &c. so that name is limited to him before the particular effate is ended, therefore no Kemainder, for a Remainder ought to begin when the particular effate begins. Court doubt that was not the intent that William Paget should bake the Land during the life of his Father, and yet the use similar during the life of his Father, and if the Kemainder should take effect during the said twenty four years against Eusill

and his companions, wherefore thould it not also take effect against Trentham and the others, to whose use it was limited during the life of the Loto Paget : And here, the ule limited to William Paget is to begin upon a collateral contingent, upon which it it cannot rife, it hall not rife at all; and I conceive that the use limited to William Pager, thall never rife, or begin, for it is limited to begin when the term of twenty four years is ended, and that is never, for that which cannot begin, cannot end, and this Cerm is meerly boid, Ergo, it cannot bebegin, cannot end, and this Cerm is meetly vold, Ergo, it cannot begin, Ergo, it cannot end, then this thenceforth cannot be, and so this contingent can never fall. H.6.& 7. E.6. A Lease was made so years upon condition, that if the Lessee do not pay such a sum of money, that he should lose his Indenture, the meaning and sense of these words is not that he should lose the Indenture in parchment, but that he should lose his Cerm: The Judgment in an Eectione himse, is, Quod querens recuperet terminum suum, that is to be understood, not the time, but his Interest in the Land so the Cerm (And Coke secretly last), that is his Interest in the Land so the Term (And Coke secretly late, that in that case there is not any contingent, so the estates precedent never began.) And as to the Tase cited before by Coke, Br. Leases 62. If the last Lease be made by Indenture, reciting the sommer Tease, certainly the second Tesse sha! I not be concluded to claim the Tand demised presently, but shall tarry until the years of the first Term be expired by essimption of time. And as to Mawnds Tase cited before, there is an estate upon which a Remainder may depend, soil, the estate tail alledged to Robert, &c. If such as now is similar to William Paget had been similed at the Tommon Law to a younger Son, the eldest Brother should have the Land in the Interim discharged of any use, and now after the Statute, no use similar do William Paget, before the and now after the Statute, no use simited to William Pager, before the contingent; where, therefore, is it in the mean time? In the Lord Pager, who being attainted, it accrues to the Queen; and out of the polletion of the Queen, this use thall never rife, although that the conpossession of the Queen, this we shall never rise, although that the contingent be performed, for now the we is locked up; A we doth consist in privity of the estate and considence of the person, if these be sedered, the we is gone: And here, if the possession be in the Queen, she cannot be seiled to another we. Wote by Godfrey, that the opinion in Baincons Case, & Eliz. Dyer 37, is not Law, and so bath the Law been taken of late. Popham contrary; If before the Statute of 27 H.8, the Father covenant in consideration of Advancement of his Son to sand selled to the use of 1. S. for life, and after the death of 1. S. to the use of my Son in Fee, here the estate of 1. S. in the use is bost, and pet the estate in the use is misted to my Son, shall not take effect before the death of 1. S. for the estate of my Son is not limited to take effect will after of I. S. for the estate of my Son is not limited to take ester till after the death of I.S and therefore the possession of the father is not charged with the use during the life of I.S. But if by way of feofiment I.S. had rewith the use varing the life of I. S. But if by way of feofiment I. had refused, the Son should have it presently, and the father should not have it, so be byhis Livery hath put all out of him, and it was not the ment of the feofiment, that the feofice should have the Land to his own use pham allowed the difference mentioned before out of 2 E4 & 19 H.6. betwirt a feofiment upon condition to enseon a stranger, and to give in tail to a stranger, and that is grounded upon the intent of the parties. And Owen Derieant put the Case cited before 1.3 Eliz. Dyer 330. A feofiment is made by the bushand to the use of himself solite, and afterwards to the use of one Ann, whom he intended to marry, so, during, and until the Son which he should beget on the body of the said woman had accomplished the age of thirty one pears, and after such time that such Son should come unto such age unto the use of the said woman, quando she should like sole, they entermarry, the dusband dyeth without Mue, the wife entresh immediately, and continues sole, and her Entry was adjudged lawful, and diately, and continues fole, and her Entry was adjudged lawful, and therefate in Remainder good, although the never had any Son, and thereupon affirt of Erroz was brought, and the fird Judgment was af

firmed (& note by Tamield, and others at the Bar, that that was the most apt case to the purpose in the Law) and the reason of such Judgment was, because they took it, that Deeds ought to be expounded according to the meaning of the parties, and estates in possession: I grant there ought to be a particular estate, upon which a semainder may be pend, but the same is not necessary where the Conveyance is by way of use: And if I covenant that A chall have my Lands to him; his ideits, to pay my Debts and Legacies, the same is by way of bargain and sate, and nothing passeth without Enrolment. And here the Attainder doth not prevent the use, as it hath been objected by Waster Solicitor, for the use doth rise before the Attainder, for William Pagethad a Remainder in tail, in the life of his father, upon the first limitation, &c. Periam Justice, I lease my Lands to you, to begin after the expiration of a Lease which I have made thereof to I.S. and in truth he hath not any Lease, the same Lease shall never begin. Manwood chief Baron, I lease my Lands to you, or grant a sent to you to begin after the death of Prisoir Serieant at Law, when shall that begin? Coke, Presently. Manwood, cojus contrarium est Lex.

Mich. 31 & 32 Eliz. In the Common Pleas. Rot. 1832.

OCLXXX. The Queen against the Arch-Bishop of Canterbury, Fane; and Hudson.

be Queen brought a Quare Impedit against the Arch-Bishop of Can-Quare Impedit. terbury, the Bishop of Chichester and Hudson, and counted that John 4 Len. 107.

Alhburnham was seised of the advowson of Burwash, & was outlawed in an Hob. 303.175.

action of Debt, during which Dut-laway in sorce, the Church voined, for owen. 155.

which it belongs to the Queen to present. The Arch-Bishop and Bish. ops plead, that they claim nothing but as Detropolitan and Dedinary. Fane pleaded that King E.4. Ex gratia fua speciali, &c. and in consideration of faithful service, &c. did grant to the Lozd Hastings the Castle and Batony of Haftings, and Dundled, &c. Et quod ipie haberet omnia bona & catalla tenentium, relidentium & non relidentium, & aliorum relidentium quorumcunque hominum, de & in Castro Baronia, &c. or within the same, pro munero debit. &c. tam ad sectam Regis, &c. quam, &c. Ut legatorem, & quid ipse faceret, per se vel per his sufficient Deputies, &c. And from him derived to the noin Earl of Huntington as Heir; and the said Earl so setted, and the said Ashburnham sected of the advocation as appendant to the Mandr of Ashburnham, holden of the laid Barony, the Church afozelaid during the Out-lawyp afozelaid, became void, for which the laid Fane, ad dictam Ecclesiam usurpando presentavit the laid Hudson, who was admitted and infituted, &c. with this, Chat idem T. C. verificare vult, that the faid Church of Burwalh is, and at the time of the grant was, within the Precina, Liberty, and Franchile aforesaid, and that the said Manor of Ashburnham, at the time of the grant aforesaid was holden of the said Barony: and the Ancumbent pleaded the same Plea: & if by that grant of King Edward the fourth, to the Lord Haftings, fcil. omnia bona & caralla, &c. The presentment to the Church thould pass or not, was the queffion. Shutleworth Serjeant, argued for the Queen, be confessed that the King might grant such presentment, but it ought to be by special than the confessed of the confe cial and fufficient wozos, to as it may appear by them, that the intent of the king was to grant fuch a thing, to the general words (omnia bona & catalla) will not pals such special Chattel in the Kings grant: And he concessed that by the sublequent words, no Goods or Chattels shall pals by such Grants, but such which may be seised, which

More. 126.

the avoidance of a Church cannot be, & quod ipfe liceret, per fe vel miniftros suos ponere se in seisinam, 8 H. 4. 114.15. the King granted to the Bishop of London, that he spould have Catalla felonum & fugitivor, de omnibus hominibus & tenentibus de & in terris & seodis prædict. and of all resiants within the Lands and fees atozesaid, Ita quod, si prædict homines, renentes & residentes de & in terris & seodis prædict. seu aliqui corum, seu aliquis alius infra eadem terra & feodis pro aliqua transgreffione, &c. vid. librum, &c. and by Tirwit, By that Grant the goods of those who are put to Pennance thall not palsito of the goods of one felo de fe,vid.42 E.3.5. One being impanelled on the Grand Enquest before the Justices of Over and Terminer, pleaded the charter of the King of exemption from Enquests, and because in the fait charter was not this claufe, licer tanget nos & hæredes noftros, upon challenge, it was rejected, and the party charged and swozn: And if the King grant to me to appropriate an advowlon, which in truth is bolden of the King, such a grant is bold, if there be not special words by which it might appear that the King had notice of it, and that his intent was that the grant hould extend unto it, 16 E. 3. Grants 58. & 33 E. 3. Grants 103. So bere the Prefentment is a special chattel, and is not usually intended or thought upon, when men speak generally of goods and chattels. But admit that it be, yet the Plea both not lye in the Defendants to plead, for they bo not berive any Interest under this grant, but are meer frangers to it, and therefoze they shall not take any advantage, by laying this grant in the Queens way, for the D. hath good title against all persons but those who claim under the grant, but that is nothing to the Defendants, for one cannot cross the title of the King, if he do not make a title to himself, As 39 E. 3.

18. 37 E. 3. 11. If the title of the Kings be found by a falle Office, the party grieved cannot traders the Kings title without waters. the party grieved cannot traverse the kings title without making title to himself found by Office, and then the king may choose whether he will maintain his own title found by Office, or traverse the title of the other. Walmefley, contrarp: Chis Citle of Prefentment is a Chattel, Rex habebit omnia catalla felonum, &c. A Cerm of years is a Chattel, fo the Issues and Profits of the Lands of men outlawed for Felony, so a right of Action for Goods; Therefore a Citle to present; and if such a Citle accrue to the King, by such general words they shall pass from the King. And as to that which hath been objected, That the Grant of King Edward the fourth Doth not extend but only to such Goods and Chattels which may be seised, he cited the Case of 39 H. 6. 35. b. Where the Grantee of a Kent soz Term of years granted omnia bona & catalla sua, tam viva quam mortua, the Rent doth pals, and pet the Szantoz cannot put him in feiun of it, but ought to expect the day of payment of it. And this Title to prefent is not a thing in action, for if no diffurbance be made, the party may have the benefit of it without any action. Anderson conceived, That this Title to present sannot pass by those general words (bona & catalla) for they do not extend to Aights, or things in Action, for such things only which are commonly known and understod, shall pals by such words: By grant of Goods, Chattels real will not pals; for when men fpeak of Goods, boufehold-fluff, mony, and fuch personal things only are understood: So a man cannot be said to have a Chattel but where he is possessed of it, and here this Interest is but jus presentandi.

Periam, This Intereft is a Chattel, for if the Thurch become boid and before prelentment the Patron vieth, the Excutors hall have the pre-fentment, for it was a Chattel vefted in the Testator: It was atforn-

Hill. 31 Eliz. Rot. 1527. In the Common Pleas.

CCLXXXI. Jones Cafe.

En. Jones had folen the Plate of Trinity Colledge in Oxford, and to mediation of his friends it was concluded and agreed, that no Cvidence thould be given against him at the Sute of the Collegge, and that the Colledge thould be recompenced for the losse, and two of his friends, Brien and Brice were bound uto Doctor Underhil, Aector of Lin-coln Colledge in Oxford, (but unto the use of the Waster and Scholes of Trinity Colledge) upon condition that if the faid Dbligoz pato forty bounds within fix months after the law Hen. Jones Mould be acquitted & released of the troubles wherein he now is, with the lafety of his life, that then, &c. In debt upon the Obligation The Defendants pleaded that he was indicted at the Alises at Ox & arraigned upon it, icil. for the fealing of the faid Plate, and found guilty thereof, and had his Clergy, and was burned in the hand, & he demanded Judgment of this Action, upon which there was a Demurter: Wind. If the words had been to pay the money, after that Henry Jones should be released and acquitted of the troubles in which he now is without any more, the Detendants have been bounded to pay the money. Periam, If the words of the condition had been, that after Henry Jones hould be acquitted of the Felany, then no mony payable, but here the words are with latery of his life: but here be conceived, that the intent of the Doligation was, that no Evidence hould be given, and so to save his life from the Sallows, for which the Defendants might have showed the special matter, and averred that the late. 73. Obligation was made for the discharge of a Felon, and so against the Law, &c. but now, they cannot take advantage of it, and afterwards Judgment was given for the Plaintist.

Pafe. 31 Eliz. In the Common Pleas.

CCLXXXII. Caftle and Oldmans Cafe. allier la

Cafie brought Debt against Oldman for a pain offested in a Court Debt.
Baron, and declared Chat the Defendant was presented at the 2 Roll. 106.
Court Baron for such an offeste, and it he did not amend it before the 3 Cro. 79.
next Court, he should pay such a pain: And at the next Court it was pre-2 last. 143.
sented, Chat the Defendant had not amended it, and so he had incurred the pain upon which the Action to duning bt, and nowithe Defendant the pain upon which the Action is divingly, and now the Defendant would image his Law, and it vies much doubted whether wager of Law lay in the Case. Shorterisk, 13. H. 71.21 Apon a Recovery in a Court Baron, mager of Law loss unt, by Condby, which Periam beinged, and by him upon an action to p another hand, it both not lye, for it is a matter of which the Country may have Combance; so here the matter is notoxious, which weth in the knowledge of all the Juross who presented it: And by him, the pain ought to be affected, which and derson denied. For there is a difference betwirt an amercement and a pain, which Windham granted. And see for the amerciament in the Leet, 10 H.6.7.12 R.2 Ley.43. Fut in a Court Baron, because it is not a Court of Accord; so in Debt upon an Arbitrament, the Law lyeth. And Waler one of the Secondaries shewed unto the Court a President, 6 Eliz.

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#### Therford and Therfords? Cafe.

Where debt was brought by Sit Thomas Tyndal, upon a pain forfeited for the breaking of a By-law in a Court Baron against Tyler; and the party was received to Wage his Law.

Pasch. 31 Eliz. In the Common Pleas.

CCLXXXIII. Thetford and Thetfords Cafe.

D Wast the Plaintiff veclared, upon the demise of the movety of the Danoz, whereof part of the Cenants were Copp holders, and part Freeholders, and that A was feifed of the Manoz, and had ishie two Daughters, and doed feised, the Daughters entred and made partition of the Demeans only, but the Services of the Free holders and Copy-holders did remain in Common; One of the Daughters took Husband the Dusband and the Wife make a Leafe of the movety of the Manor to the Plaintiff for years by word, rendring Kent, the Lesse entired in to the Demeans allotted to the Cliffe of the Lessor. The Dusband vied, and the Cliffe brought an Action of Cliast. Anderson, By the partition the Demeans are now become in gross, and severed from the Band; And if partition be made of a Manoz, to as the Demeans be allotteb And if partition be made of a Danoz, to as the Demeans be allotted to one Sillet, and the Services to the other, now the Dannoz is villolived, yet if the other Sillet dieth without illue, and het part defends of the other, now it is become a Danoz again, which Windiam and Periam granted, See 12. H. 4. 271. And Anderson was of opinion, that the moyety of the Demeans did not pass by the words of the movety of the Danoz, as if one seised of a Danoz maketh a Feofiment in fee of part of the Demeans, and afterwards to purchaseth them, and then nakes a Feofiment of the whole Danoz, the Demeans reputhdised will not pass thereby, for they were once severed from the Danoz, and not re-united by the purchase. Periam, Although that in truth it is not a Danoz noz any part of a Aganoz, yet if it both becon reputebly movety of the Danoz, it Hall pass by such name, which Anderson grant, ed, but it is not like to our Case. Periam, This is an ancient partition, as appeareth by the Merdia, ten years pass, and also it both been reput movety of the Banoz, it mail pais by fuch name, which anderson grant, ed, but it is not like to our Case. Periam, This is an antient partition, as appeareth by the Aethia, ten years path, and also it bath been reput, ed the movety of the Banoz, therefore it hall pass. Windham concessived the movety of the Banoz, therefore it hall pass. Windham concessived the intents of ment of the Szantozis the best Interpreter of these words, without relying Articly upon the words. Anderson, If we shall take the intents of men for Law, we shall fall into many consusions in our proceedings, but the Law is to judge of the meanings of men by their words. Ever in the constructions of Wills, the intent of the Testators have not had further savue than the words have given leave. As both other point: It was argued by Walmsey, that the Lease made by the Dusband and case is without Deed was void, See 1 Ma. Dyer. 31. And if the Alise after the death of her Dusband accepts the Kent words such a Lease referbed, it shall not bind her, so the consent of the Alise supply to be at the beginning of it, which cannot be without Deed. Anderson canceived that the Lease is not meetly note, See 15 Eiz. Said & Supletons Case. Plowd. 421. Periam, The matter is clear, so although the Palaintist declares generally of a Lease made by the bushand a Talife, pet the Aury bath sound, that it was by Indonenture, and that is publicant enough. And if the Bushand and Wife make a feotiment of the saids Land, it is the Feotiment of both of them; which Waddeley granted: It was adjoined. granted : It was adjorned. A SING CORREST CONTROL OF THE CONTROL OF THE CORREST OF THE CORRES

Partition

6 Co. 64.

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## Trin. 31 Eliz. In the Common Pleas.

CCLXXXIV. Smalwood and others, against the Bishop of Lichfeld and others, Quare Impedit.

Humphrey Smalwood, Richard Say, and Thomas Say, Executors of VVil-Quare Impedie, liam Say, trought a Quare Impedie against the Bishop of Coventry and 1 Cro. 241.

Lichteild, and M. Ancumbent, quod permittat præsentare ad Archidiaconatum de Lichteild, and M. Michimbent, quod permittat præsentare ad Archidiaconatum de Derby, which was boid, Et ad præsentationem Testatoris in vita sua, & nunc in retardationem executionis Testaments, did besong to the Executoris: Exception was taken because these words surverandationem executionis Testament) routed not be applied to a distinctioning in the life of the Cestator. Windham, Chere is not any write in the register of Quare Impedic, upon a distinction not be applied to a distinction, calbattien? therefore no cemeby because must ather write Cestator. Anderson, calbattien? therefore no cemeby because must ather possessing of the Deservation of the Deservation of the Estator, upon which the Executions are taken out of the possessing of the Cestator, upon which the Executions are taken out of the possessing of the Cestator, upon which the Executions the substitute of the Executions. Community the Execution of the Cestator, upon which the Execution to be appelled upon the substitute of the Cestator will be a substitute of the Execution. The Archive substitute of the Executions then selected the Act of the Execution work of the Execution work of the Execution which bersons but to the Executions. Anderson, 7 H. 4, 73. Execution shims of an Execution that make with the Execution was maintained by the Executions he equity of the Executions has been a Quare impedication in the Execution which have a given be a finished by the actual to the Execution which have a given been a substitute in the Execution which have a given been a substitute in the Execution will be a Quare impedication, but it mas not allowed, for his Archiveacon with Locum in Coro: Another the Execution, we have a substitute in the Executions have a constant to the Execution where the Execution of the Execution Testament was given, that the Execution bearer in and afterwards and the Execution where the Execution Testament was given, that the Execution bearer in a substitute the Execut Derby, which was voit, Et ad præsentationem Testatoris in vita sua, & nunc in re-

# Trin. 31 Eliz. In Communi Banco

The an Anton Monight anathst one as Superior which pleaved that he teristed, upon whileh the parties were at Mule: The Bishop oid certific, Len. 180. Timer, upon whileh the parties were at Mule: The Bishop did certific, Len. 180. Temer Serjeant model, to have the addice of the Commission; that matter, and arbaid that the Court outle to indice to the Commission; which was desped by the whole Court, for he is not the Distort and the Court to that purpose, but the Bishop bankels is the Officer: And the party taking aber against the Certificate of the Bishop, ind more than against the Ketom at the Special The Court was the order in most than against the Centre of the Distort was the order man the Cale against the Ishop for his take Certificate: Dut it was moved, Chat the Ishop for his take Certificate: Dut it was moved, Chat the Ishop for his take Certificate: Dut it was moved, Chat the Ishop for his take Certificate: Dut it was

ed by Jury, and not by the Certificate of the Bishop, and so was the opinion of Windham and Walmesley. Periam, Where the Issue is whether the Executor viv refule before such a day, or after, there the tryal shall be by Jury; contrary where the Issue is upon refusal generally, because the refusal is before him as a Judge, as also is Aesignation.

Mich. 31. Eliz. In the Common Pleas.

CCLXXXVII. Sutron and Holloway and Dickons Case.

Sevil. 99. Oven. 96. Co. 1 inft. 227.2 3 Cro. 77.

12 an Ejectione firmz by Richard Sutton against Robert Holloway, and Thomas Dickons, upon not guilty pleaded, the Jury found this special mate ter, scil. That the said Thomas Dickins had not any thing in the Lands in question at the time of the making of the Lease, upon which the Action is brought, scil. Who leased by Indenture to the Plaintist sor certain pears, who entred, and afterwards the late Thomas Dickins, contra Indenturam fuam prædictam intravit upon the Plaintiff, and, If the fame fould be a good Lease by Estoppel was the question; the Jury having sound the truth of the matter, sell. That the Lessoy had not any thing at the time of the demise; Walmesley objected, That the Jury ought not to find the Indenture, because it was not pleaded, so the Plaintist doth not declare upon any Indenture; but the Erception was not allowed, but in old time the Law was such, 22 E. 3. but at this day the Law is otherwise, See Scholassica's Tale, 14. Eliz. Plowd. 41 1. But where a selease of other writing ought to be pleaded, there it ought to be shewed to the Tourt. Vialmesley, in rei veritate, the Lease is void, for a man cannot let Land in which he hath not any thing: but in respect of the parties themselves, the Lessons and Lesse both are concluded to say, Chat is no Lease, so none of them can say to the contrary: But here the Jury which is a third person, is not essoped to say the truth, but they may find the such matter and the truth of the Cale, and the Estopped bath not place cial matter and the truth of the matter annearing to the Turness the Turness there; but the truth of the matter appearing to the Judges, the Judges ought to adjudge upon the same, scil. If a man may make an effectual lease of Lands, in which he bath not any thing. At another day it was moved by Shul. Although that the Jury be not effopped, yet the parties themselves are effopped, so the Law makes the Estopped betwirt the parties, and the Law will not permit a man to say any thing against his own Deed being indented, not any matter contained in it. Periam and Anderson clearly so, the Plaintiff, That it is a Lease by Estoppel; and by Periam, It hath been adjudged in the Kings Bench, That the Jury in such case, are compellants upon pain of Attaint to fing the Against. case are compellable upon pain of Attaint to find the Estoppel: VValmesley, here the Estoppel is out of Doors, for the truth of the matter dis
closed by the Clerdia, not by the parties only maketh the Estoppel, the
much replied upon the case of Linkeron, 149.4. A woman seised of Lands in fee, taketh a Dusband, who alteneth to another in fee, the Altenee in see, taketh a Dusband, who alteneth to another in fee, the Altenee lealeth to the Dusband and Wife for their lives, now the Wife is remitted, and seised in fee as before, here if the Altenee, i.e. the Aesto, brings an action of Clash against the Dusband and Wife, the Dusband cannot but the Plaintist by the truth of the matter; sell the Remitter of his Cliffe; for he is estopped to say against his own Feosment, and his retaking of the particular estate to himself and his Cliffe; But if in an action of Clash, the Dusband make default at the Grand Distress, and the Cliffe papeth to the received, the may well shew the whole matter: Do here the Jury! Vindham, The Plaintist ought to have bemurred upon the Evidence: Periam, Cliffe if the Desendant will not some with the Plaintist in the Denukrer? VVindham, there the Court ought to over-rule them, est

Estoppel.

Hob. 227.

0 1 .50

the parties had demurred upon the Evidence, we hould have adjudg-. ed upon that Evidence, that a man cannot lease lands in which he hath not any thing: And here, the Estoppel could not be pleaded, for the Defendant hath pleaded the general Issue, but if he had pleaded Non demisir, then the Estoppel should have holden place.

Pasch. 31 Eliz. In the Common Pleas.

CCLXXXVII. Mills and Snowballs Cafe.

A Jury did furmife at the Bar, that he was a Tenant in Ancient priviledge of demene, and had his Charter in his hand, and prayed to be exemption the Jury and discharged, but the Court did not regard from Juries. it, but caused him to be sworn. And Windham said, that he might have i Cro. 142. his remedy against the Sheriss; and Nelson Prothonotapsaid, if he had made default and lost Issues, he might shew his Charter in the Erchequer upon the Americanent estreated, and there he should be discharged: In that Case, it was holden by the Court, That is a feosment be made of a House, and the Deed be delivered in the Poulse without other circumstance, the same doth not amount to a Livery of seither of seisin, but if he do any act by which the intent of the Feds Livery of seign appeareth that the Feossee should have Livery and Scisin; as it so, the parties go of purpose to the place intended to pass, to the intent that the Deed may be delivered in that kind, the same doth amount to a Livery, by Anderson, and the whole Court.

Mich. 32 & 33 Eliz. In Communi Banco.

CCLXXXVIII. Bradstocks Case.

Robert Braistock seised in fee of certain Lands, made a feoffment in fee to the use of himself in tail, and soy want of such Mue to Estates.
The use of John Bradstock, his Brother in tail, and soy want of such Assue to the use of Henry Bradstock, another Brother in tail, Provided Conditions always, Chat if the said John of Henry do go of about to about any estate ordemile by Copy, made or to be made of the Premilles, or any part thereof, that then his efface should cease. Robert Died without Time, John entred and levyed a fine, Sur conulans de droit come ceo, &c. of the Land: And the opinion of the whole Court was, Chat this fine was not any offence against the said Proviso, for these words (made or to be made) do not extend to estates made or limited by the said feostment, but only to estates before made, and to be made afterwards.

Mich. 32 & 33 Eliz. In Communi Banco.

CCLXXXIX. Long and Hemmings Cafe.

In a Quare Impedit by Long against Hemming and the Bishop of Glou-cester, or the Church of Frombillet, upon the pleading the Julie was, It is the Cro. 2092.

The Long Father of the Plaintist oid enseoff the Plaintist of the Dans of From. to which the Advowson of the said church was appendent before he granted the Addowson to one Strengtham who granted it to the Def. or not. And the Jury gave a special Clerdia, icil. Chat the Abbot of S. was selsed of a capital Desluage in Frombillet, & of one hundred

Acres of Land there, and that there was a Tenanch holden of the faid capital Defluage by luch Services, and that the laid capital Defluage had been known time out of mind, by the name of the Apanox of Frombillet, and that the Advowson was appendant to it, and conveyed the said capital Desluage and Advowson to the King by the dis folution, and from the king, to the iaid Thomas Long, who is leised, without any Deed did enseoff the Plaintist of the laid Banoz, and made Aivery and Seisin upon the Demesnes, And that the said Thomas Long by his Deed made a grant of the said Advowson, to the said Strengham, and afterwards the Free-holder attorned to the Plaintist. And by the clear opinion of the whole Court, here is a lufficient Man. or to which an Advowson may be well appendant, and that in Law the Advowson is appendent to all the Manoz, but most properly to the Demesnes, out of which at the commencement it was derived, and therefore by the attornment asterwards, within construction of the Law shall have relation to the Livery, the Advowson bid pass included in the Livery: And the grant of the advowson made mesne between the Livery and the attornment was void; and afterwards Judg-ment was given, and a Wirit to the Bishop granted for the Plaints.

### CCXC. Mich. 32 & 33 Eliz. In Communi Banco.

Debt

space a Bill of Debt to B. for the payment of twenty pounds at four days, feil. five pounds at every of the faid four days, and in the end of the Deed, covenanted and granted with B. his Executors and Administrators, that if he make default in the payment of any of the fato payments, that then he will pay the relidue that then shall be un paid; and afterwards A fails in the first payment, and befoze the fecond day B. brought an action of Debt for the whole twenty pounds, It was moved by Puckering Serieant, That the Action of Debt did not live befoze the last day encurred; And also if B. will sue A. befoze the last day, that it ought to be by wap of covenant, not by Debt: But by the whole Court, the action both well lye for the manner, for if one covenant to pay me one hundled pounds at such a day, an action of Debt lyeth, a forciori, when the words of the Deed are covenant and grant, for the word covenant sometimes sounds in covenant, sometimes in contract, secundum subjectum materia.

Sty. 31. 32. 1 Cro. 797.

Owen. 42. 1. 2 Rol. 523.

Roll, Tit. Co.

Mich. 32 & 33 Eliz. In Communi Banco.

#### CCXCI. Lancasters Case.

Information was against Lancaster for buying of pretended

A fights & Citles upon the Statute of 32 H. 8. And upon not guilty venant pl. 72. picaved, It was found for the Plaintiff, e it was moved in arrest of Indoment, because the Informet had not pursued the Statute, in this, that it is not set south, that the Defendant not any of his Ancestors, or any by whom he claimed, have taken the profits, &c. and the same was holden a good, and material Exception by the Court: although it be loved in the Information, that the Idlaint, himself hath been in posses. layed in the Information, that the Plaint, himself hath been in posses, since the Land by twenty years before the buying of the pretended Title, for that is but matter of argument, & not any express allegation, for in all penal Stat, the Plaintiss ought to pursue the very words of the Stat, and therefore by Anderson, It hath been adjudged by the Judges of both Benches, that is an Information be exhibited upon the fact of Assessment of the pursue the technique. Stat. of Alury, by which the Defendant is charged for the taking of twenty pounds for the Loan and forbearing of one hundred pounds for a year, there the Information is not good, if it be not alledged. in it, that the lato twenty pounds was received by any corrupt of de-ceitful way of means: And in the principal Cale, for the Caule afore. fato, Judgment was arrefteb.

Mich 32 & 33. Eliz In the Common Bench.

CCXCII. Bagshaw and the Earl of Shrewsburies Cafe.

Daghaw hought a Writ of Annuity against the Earl of Shrowsbury; Anapiry. To the arrerages of an Annuity of twenty Parks peranum, grant. Anapiry. The Defendant to the Plaintist, Pro Consilio impenso & impenso & impenso, the Defendant pleaded, that before any arrerages incurred, he required the Plaintist to do him Service, and he resuled: The Plaintist dy replication said, that before the resulal, such a day and place the Defendant discharged the Plaintist of his Service, &c. Ind the opinion of the Court was, that the Plea in Bar was not good, for he aught to have shewed for what kind of Service to do, the Plaintist was so retained, and so what kind of Service the Annuity was granted; and then to have shewed specially what Service the Runnity was granted; and then to have shewed specially what Service the required of the Plaintist, and what Service the Plaintist resuled. Another matter was moved, If the discharge shall be peremptory, and an absolute discharge of the Service of the Plaintist, and his attendance, so that as afterwards the Defendant cannot traitive Service of the Plaintist. And hy Walmedy Annice, it is a peremptory discharge of the Service, so atherwise have can be be retained with another Moders and so be should be out of every Service. Vyindham contrary, for here the Plaintist hath an Annuity so his life, and therefore it is reason that he continue, if he require teth: But where one is retained but so one of two years, then once discharged, is peremptory and aidedute. discharged, is peremptory and absolute.

Mich. 31 & 32. Eliz. In the Common Beach.

CCKCHI. Mathefon and Trots Cafe.

Descript Matheson and Trot the Case was, Six Anthony Denny selsed of Len. 190.

Decrease Mandes in and about the Cown of Herdord, holden is educate, and of divers Hanners, Lands, and Septembers in other places halden in chief by kinights derotte, and baying Islae sus. Sens, Henry am Edward, by his last selsific in spring, devoted the Lands solder in the extended to Edward Denny his pounger Han in fee, and view selsed for at the Premises, Henry being then within age; After Office was found introut any mention of the sals Devise; the Lands after with the Premises, henry being then within age; After Office was found introut any mention of the sals Devise; the Lands after handshooy pred selsed, and leaded the Lands afterness, hungs the Binority of the beit; by fonce and selset of which Lands the Premises, and the Lands to him devised, and before any entery of the last Edward in the Lands to him devised, or any entry made by the last Edward in the Lands to him devised, or any entry made by the last Edward in the Lands to him devised, or any entry made by the last Edward in the Lands to him devised, or any entry made by the last Edward in the Lands to him devised, or any entry made by the last Edward in the Lands to him devised, or any entry made by the last Edward in the Lands to him devised, and salved Rent divers pears to the salt Hanry; And afterwards by tank, in the company of the salt L.S. without any special entry of claim there made, I.S. assumed his Inverse to the last Henry, industry, and after four and twenty years after the san and devise the sale to the san and devise the sale to

2 Len. 147. 1 Cro. 920. 3 Cro. 145. Owen. 96.

the death of the laid Sir Anthony, the laid Edward entred into the Defeent, where Land to him deviled by the laid Devile; and leafed the same to the Plain. tikes away en- tiff,&c. And it was moved here, if this dying feised of Henry of the Lands in Hertford, and vescent to his Deir, hould take away the Entry of Edward the Devisee. And by Anderson electly, If here upon the whole matter be a vescent in the Case, then the Entry of Edward the Devisee is taken away, although that the Device at the time of the descent had not any action of other remedy, for it shall be accounted his folly that he would not enter, and prevent the descent. But VVindham, Periam, and VValmely Justices, were of a contrary opinion. Foz a Devilee by a Devile hath but a Citle of Entry, which hall not be bound by any Descent, as Entry foz Mortmain, foz Condition broken. And after long beliberation they all agreed that there was not any Descent in the Cale, for by the Devile, and death of the Devilor, the Frank tenement in Law, and the Fee was vested in the Deviler Edward: and then when the Queen feised, and leased the same during the Monage of Heary, and the Lessee entred, he did wrong to Edward, and by his Entry had gained a toxisions Estate in see, although he could not be said properly a Dissessor, nor an Abator: And afterwards when Heary after his full age, when by his Indenture he leased without any special Entry, or supra, and by colour thereof the Lessee entred, now he is a wrong-doer to Edward the Devise and by his Entry had gained a wrongfiil Possession in fee: and then the paping of the Kent to Henry, not the walking of Henry upon the Lamb without any special claim, did not gain any Seisin to him: and so he was never feised of the Land, and could never bye seised, and then no Descent; and then the Entry of Edward was lawful, and the Lease by him made to the Plaintiff was good: And so Judgment was given for the Plaintiff.

Mich. 32 & 33 Eliz. In the Common Bench.

CCXCIV. Greenwood and Weldens Cafe.

Replevin.

The a Replevin between Greenwood and VVelden; The Defendant made Conulans as Bapliff to John Cornwallis, & thewed how that feben acres Tonulans as Baplin to John Cornwallis, e theweo how that leven acres or Land called Piles, is locus in quo: and at the time of the taking were holden of the laid Cornwallis by certain Rent, and other Services: And for Kent acreat he made Conulans, as Bayliff to Cornwallis. The Plaintiff pleaded out of the Fee of Cornwallis, upon which they were at Ime: And it was found that the Plaintiff is feiled of seven acres called Pilles, hoden of Cornwallis, ut supra: But the Aury say, Chat locus in quo both contain two acres, which is called Pilles, and these two acres are and then were holden of Asmondesham of the Middle-Temple: And if are, and then were, holden of Agmondesham of the Middle-Temple: And if upon the whole matter, videbitur Curiz, &c. And by the opinion of the whole Court, out of his fee upon that matter is not found, for although it he found, that the two acres be holden of Agmondesham, pet it may be that they are within the fee of Cornwallis, for it may be that Cornwallis is Lozd Paramount, and Agmondesham Apelne, and then within the fee of Cornwallis: And therefore for the incertainty of the Clerbia, a Venire facias de novo was awarded.

Mich, 32 & 33. Eliz, In the Common Bench.

CCXCV. Billiop and Harecourts Cafe.

Affumplit. 1 Cro. 210. Buigning

219010 maki r

Le an Action upon the Cafe, The Plaintiff veclared that the 5 Junii, 30 Leiz the Detend. (inconfideration that the Plaintiff the farme vap and year, fold and delivered to the Detend. a Dolle did promife to pay the

Plaintiff a hundred pounds in Trinity Term then next enluing, and thewed that the Term began 7 Junii after: And upon Non assumplic pleaded, it was found for the Plaintiff. And it was moved in arrest of Judge ment, That it appeareth upon the Declaration, that the Plaintiss hath-not cause of Action, so the Trinity Termintended is not pet come, so the day of the Assumplic is the fifth of June, and the sourch day was the first day of the laid Term, wil the day of Essons, and the seventh day 4. die post, and then the promise being made at the day aforesaid, after the Commencement of the said Term, the same is not the Term intended, but the Plaintist must expect the performance of the promise until a year after: And of that opinion was Anderson, but the three of ther Justices were strongly against him to the contrary, for by company the nearly the Term said that mon intendment amongst the people, the Term hall not begin until 4. diepost, and so it is set down usually in the Almanack; And afterwards Judgment was given for the Plaintist.

CCICVI. Mich. 32 & 33. Eliz In the Common-Benceh.

COoper Serieant came to the Bar, and shewed that A. Tenant in Co. 2 Inst. 483.

C tail, the Remainder over to B. in fee. A. foza great sum of mony 484.

Cold the Land to I.S. and his heirs, and foz assurance, made a feosiment 1 Cro. 323.

in fee, and levied a fine to the laid I. S. to the use of the afid I.S. and Hob. 196. his Deirs: And note that by the Indenture of Bargain and Sale, A. 3 Cro. 224covenanted to make such further Assurance within seven days, as the covenanced to make used further Authrance within feven days, as the faid I.S. of his heirs, of their Council should devise: And shewed, that before any further assurance was made, the said I.S. died, his Son and pett being within age: And now by advise of Council, and of the Friends of the Insant, it was devised that for such further assurance and cutting off the Remainder, a common secovery should be suffered, in which the said Insant should be Tenant to the Pracipe, and should bouch the Aendor, and because that the said Term of seven years covery suffered is almost expired, and that the said secovery is intended to be unto by an Insant the use of the said Insant and his bests, it was praped that such a see by his Guardicovery might be received and allowed. And two Highests in such an or see mere shewed in the time of this Queen: one the Tase of the offar Case were thewed in the time of this Queen: one the Case of the Earl of Shrewsbury, and the other one VVisemans Case: But the Justices were very voubtful what to do; But at last upon good assurance of people of good Credit, that it was unto the use of the Infant and upon the avpearance of a good and lufficient Guardian for the Infant in the Aecobery, who was of ability to answer to the Infant if he should be deceived in the passing of that Aecobery; and upon consideration had of the two Presidents, and upon Affidavit made by two Witnesses, that the faid intended Recovery was to the use of the Infant, the Recovery was received, and allowed.

Mich. 32 & 33 Eliz. In the Common Bench.

CCICVII. Cottons Cafe.

E was found by special Derdict, that Berwich and Tesdel fessed of cet- fines levied to tain Lands, conveyed the same to Sit Thomas Cotton for life, the Re- use. mainter to VVil. Cotton, & primogenito filiofuo, & hæredi mafculo, & fic de primo- Co. 2 Inft. 519. genid ad primogenitum dick. VVilliam, the Aemainter to the right Detrs of 1 Cro. 219. the body of Sir Tho. Cotton, and VVil. Cotton lawfully issuing, the Aemainder to the right Peirs of Sir Tho. Cotton: VVil. had Issue a Son boin here in Eng. and went beyond Sea to Antwerp, and there continuing, and his Son being within age in England, Sir Thomas Cotton levied

Effates

tevied a fine of all the Land, fur conusans de droit come ceo, &c. And afterwards by Indenture convenanted to fland feifed to the use of himself for life, and afterwards to the ule of Rober Cotton his Son in fee : William bied at Antwerp, his faid Son being within age in England, Sit Tho. Cotton Died, Robert entred, and leafed the Lands tog pears to Sary, and the Infant Son and beir of William leafed the Land to one Chewn at Will, who entred and oussed Sary, who thereupon brought Ejectione firma. It was here holden by the Court, that Dir Tho. Cotton was Tenant sor life the, Aemainder to William sor term of his life, the Remainder to the Deirs of both their bodies isluing: So as unto one Moyety Sir Thomas Cotton had an Efface tail dependant upon the laid Effaces for life; and so the fine levied by him was a Bar to the Islue of William for a Moyety. And as to the other Doyety they held that the laid fine was not any Bar, but that the party interested at the same time might avoid the fine at any time during his Ronage, they pears after, for Wil. his father was not bound by the Statute of 4 H.7 because at the time of the Fine sevied, he was beyond the Seas, and although he never returned but died there, pet by the equity of the Statute his Inue hall have five years after his death to avoid the Kine, if he were of full age, and if he were within age, then during his Monage, and five years after. At another day the Cale was argued and put in this manner, viz. Lands were given to Six Thomas Cotton for life, without Impeachment of Wash, the Remainder over to Cheny Cotton his eldest Son, & primogenito filio & haredi Masculo, of the faid Cheny, & fic de primogenito filio in primogenitum filium, the Remainder to the Deirs Males or the body of the lato Cheny, & for wantof fuch Iffue, the Aemainder to Wil. Cotton his second Son, & primogentio filio, in primogenitum filium, the Remainder over to the said Sir Thomas, and the said William, and the Peirs Males of their bodies lawfully begotten. Cheny Cotton bied without Mue, William having Mue, went beyond the Sea, Sit Thomas Cotton, 19 Eliz. levied a fine with Proclamation, and at terwards William the father vied in Antwerp, his Son being within age, Sit Thomas by Indenture limited the use of the fine to himself for life, the Remainder over to Robert Cotton his third Son in Cail, Sit Thomas Died (but it both not appear at what time) William the Son being pet within age entred (but nonconftat quando) and 3r Eliz. leafed the Lands to the Defendant at Will. Drue Serjeant argued foz William Cotton. And he conceived, that William the Father had an Effate tail, and then the entry of William the Son was congeable for the whole: But admitting that it is not an Effate-tail in VVilliam the father for the whole, vet he hath by the second Asmainder an Estate-tail in the Moyety, and then his Entry good as to one Doyety; and then Robert being Cenant in Common of the other Doyety, his Leffee without an aqual Duffer cannot maintain an Ejectionæ firmæ against the Lessee of his Companion. And he conceived here is a good Estate-tail in VVilliam Cotton by hirtue of the Limitation to William, & primogenito filio & hæredi Masculo ipsius Guliel. & sic de primogenito silio in primogenitum silium, &c. for according to the Statute of VVest. 2. the will of the Donor ought to be observed, and here it appeareth that the intent of the Donor was to create an Estate-tail, although the words of the Limitation do not amount to so much. And the Effates mentioned in the Statute afozelaid, are not Aules for Entails, but only Examples, as it is faid by Trew, 33E3F. Tail 5. & fee Robeiges Cafe, 2E.2.1 Fitz. Tail: and 5 H.5.6. Land given to A. and B. uxori ejus, & hæredibus eorum & aliis hæredibus dicti A. si dict. hæredes de dictis A. & B. exeuntes obierint fine hæredibus de fe, &c. and that was holden a good Entail; fo a gift to one and his Beirs, i hæredes de carne sua habuerit, & si nullos de carne sua habuerit revertatur terra, and adjudged a good tail: So 39 E. 3. 20. Land given to Dusband and Clife, & uni hæredi de corpore suo ligitime procreat. & uni hæredi ipsius hæredis tantum, And that was hol-

Tails

den a good Call; and to he conceived in this Cale, that although the words of the Limitation are not apt to create an Estate-tail according to the physic and sile of the said Statute of VVcft 2. pet here the intent of the Donoz appears to continue the Land in his Mame and Blood, for Villiam the Son could not take with his father by his Limitation, for he was not in rerum natura, and therefore all fall beft in VVilliam the Father, which fee 18 E.3 Fitz. Feofiments & Fait. 60. Now it is to see, if upon the Limitation to Six Thomas Cotton and VVilliam his Son, by which the Remainder is limited to Six Thomas Cotton and VVilliam and the Peirs Wales of their bodies issuing, the said Six Thomas Cotton & Wil. have a joynt Estate-tail; in respect that the Issue of the body of the Son, may be beir of the Body of the Kather: and to because they might have one beir which shall ve inheritable to his Land, it shall be one entire Estate-tail in them : But he conceived that they are feberal Effates tail, and that they are Tenants in Common of an Effate but one of two several Formedons was the Question. And by Saunders, Brook, and Brown, but one Formedon, and Quere left of it; pet admitting that, pet notwithstanding that, it might be that they had several Estates tail, 17 E. 3.51.78. Land given to a man and his Sister, and to the Peies of their two Bodies isluing, they have several Estates tail, and pet one Formedon. And see 7 H. 4.85. Land given to a man and his Pother, opto her Daughter in Tail, here are several Entails And here in the principal Case, Six Thomas Cotton hath one Moyety in Tail expectant upon his Estate so life: and therefore as to the Moyety of Six Thomas Cotton he is bound by the Fine. And the other Moyety is left in the Son, who may enter so a foresture upon the alienation made by his Father, as well in the life of the Father, as afterwards. Now after this Fine levied, the entry of Villiam the Son by virtue of his Remainder is lawful after the death of Six Thomas, although that VVilliam the Father was beyond the Sea at the time of the Fine levied, and there afterwards died, VVilliam the Son being within age. The words of the Statute of 4 H.7. are, Other than Women Covert, of out of this Realm, et. so that they of their beins make their Entry, et. within sive years after they return into this Land, &c. So that by ders, Brook, and Brown, but one Formedon, and Quære left of it; pet adec. within five years after they return into this Land, &c. So that by the bare letter of the Act, VVill. the Son bath not remedy, not relief by this act against the fine, because that William, the father Died bepond the Sea, without any return into England; yet by the Equity of the Statute he hall have five years to make his Claim, although his father never return, for if luch literal construction should be allowed, it hould be a great mischief, and it thould be a hard Exposition, for this Statute ought to betaken by Equity, as it appeareth by diverle Cases, 19 H. 8.6. Hy Ancie both discie my father, and afterwards levies a fine with Proclamations; my father dieth, and after within five years my Ancie dies, that fine is no Bar to me, yet the Exception doth not help me, for Tan Bein to him that levies the Exception doth not help me, for I am beir to him that levied the fine, and lopatop to it, but my Citleto the Land, is not as beir to my Uncle but to my father: So if an Infantafter luch a fine levied, vieth befoze his full age, his heir may enter within five years after, and yet that Case is out of the Letter of the Statute. And by Brown and Sanders, If the Disseise vieth, his salife entent with a Son, the Disseisoz levieth a Fine, the Son is bozn, although this Son is not excepted expessly by the words, because not increme natura at the time of the Fine leviet, etc. yet such an Infant is within the equity and meaning of the faid Statute. See the Cale betwirt Stowel and Zouch, Plow. Com. 366. And by him,

It was holden, 6. Eliz. that an Infant brought a Formdon within age, and adjudged maintainable, although the words of the Statute be, That they thall take their actions of lawful Entries within fipe years atter they come of full age: And he also argued, that here, when Sir Thomas being Cenant for life, lebyed a fine, which is a forfeiture, he in the Remainder is to have five years after the fine leved, in refpect of the prefent forfeiture, and also five years after the death of the Te. nant for life: And that was the cate of one Some adjudged accordingly in the Common Pleas: It hath been objected on the other fide, That the Ocfendant entring by color of the Leafe at Will made to him by William who was an Infant, that he was a Diffeiloras well to the Infant as to the Leffor of the Plaintiff, who had the Apopety as Tenant in common with the Infant, and then when the Lessoz of the Plaintist entred upon the Defendant, and leased to the Plaintist, and the Defendant entred and ejected the Plaintist, he is a Disseiloz; to which he answered, That the Defendant when he entred by the Lease at Mill, he was no Diffetor, for fuch a Leafe of an Infant is not both, but only boidable, &c.and then a sufficient Lease against the Plaintist, although not against the Infant. Beaumont Serjeant, to the contrary; By this manner of gift, William the Son took nothing, but the estate setsed only in William the Father, but not an estate tail, by the words, heredi masked, &c. And volumes Departure in the unit sufficient mands cannot create an estate tail. luntas Donatoris, without lufficient words cannot create an effate tail; but where the intent of the Donoz is not according to the Law, the Law shall not be construed according to his intent: But this intent shall be taken according to the Law. And he held that Six Thomas and VVilliam had several estates in tail, and several Popeties, and not one entire estate, and here, upon all the matter, Sir Thomas is Tenant for life of the whole, the Remainder of one mopety to him in tail, the Remainder of the other movety unto VVilliam in tail, and, rebus sic stantibus, Sir Thomas levying a fine of the whole, now as to one movety which the Conuto had in tail, the fine is clearly good, and to as to that, Robert the Leftor of the Plaintiff had a good Citle, as to the fato movety; and as to the other movety he conceived also, that VVilliam is bound, for this Statute shall not be construed by Equity, but shall bind all who are expressly excepted, and that is not VVilliam the Son, for his father never pressy excepted, and that is not VVilliam the Son, for his father never returned, and then his Deir is not releived by the Statute; Also Vvilliam had a Kight of Entry at the time of the fine levyed, icil. for the forteiture, and because he hath surceased the time, for the said Right of En try, he shall not have now five years after the death of Cenant for life, for he is the same person, and the second saving which provides for future Kights, extends to other persons than those who are intended in the first laving, and he who may take advantage of the first laving, cannot be releived by the fecond faving, for no new title both accrue to him in the Aeverlian of Remainder, by the death of Tenant for life, for that title accrued to him by the forfeiture, so as the title which he hath by the death of the Tenant for life, is not the title which first accrued unto him: Also by this forfeiture, the estate for life is determined, as if Tenant for life had been dead; for if Tenant for life maketh afeosiment in fee, the Leffoz may have a Witt of Entry ad terminum qui prætesijt. Firz. 201. which proves, that by the forfeiture the effate is determined, and then no new title both accrue to him in the Remainder, by the death of the Tenant for life, but that only which he had before the alienation, so that his non-claim after the five years thall bind him. Then, when Then, when VVilliam the Infant having a sight to a movety, and Robert the Leftor of the Plaintiss a Kight to the other movety, and the Infant lealeth unto the Desendant at Will, who entreth, now is he a Disseisor as well to Robert as to the Infant: Then if the Desendant be Disseisor and hath no title by the Infant, Robert who hath Kight in a movety may well enter into the whole, for he bath the possession per my & per

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rout by his Entry, and then when the Defendant both eject him, he hath good cause of Action. And after at another day the Case was moved, and it was agreed. Chat for one moyety the Infant is bound, for Sir Thomas had an estate tail in a moyety, for he was Assue of the body of the Conustor Dut for the other moyety, the Fine sevend by Tenant for life, William the Father being then Cenant beyond the Sea, It was holden by Anderson, Windham, and Walmesly, that the Infant was not barred, notwithstanding the objection abovesaid. That William the Father never returned sith England, and notwithstanding the many of the ther never returned into England, and notwithstanding the words of the Statute of 4H.7. And by Walmesley, If an infant make his claim within age it is sufficient to avoid the Fine, and yet the said Statute seems to appoint to him time within five years after his full age, so that accoping to the very words, a claim made before or after should be vain, yet in Equity, although he be not compellable to make his claim until the time allowed by the Statute, yet if he make it before, it is good enough. And by Anderson, Although that VVilliam the Father did not return, pet if he makes not his claim within five years after the death of his father being of full age, and without any impediment, &c. he hall be barred. If in such take a man hath many impediments, he is not compellable to make his claim when one of the impediments is temobed, but when they are all removed. So if the Ancestoz bath one of the said impediments, and dieth befoze it be removed, and his beir is within age, or bath other impediment, he is not bound to make is claim till five years after his impediment is removed. And Somes case cited before was holden and agreed to be good Law, for the Forfeiture may not be known unto him. And as to the objection against the Lease at Calill, because it was made by an Infant, and no Rent reserved upon it, not the Lease made upon the Land, and therefore the Lease should be a Disselog, To that it was answered, Be the Desendant a Disselog, or not, it is not material here, for if the Plaintist had not title according to his Declaration, he cannot recover, whether the Desendant hath title or not, for it is not like unto Trespals where the very possession without i Cro. 438.

other title is good, contrary in Actions against all who gave not title; hat in Fiedings shows if the title of the Plaintist he not good and sufficient for the title of the Plaintist he not good and sufficient shows the title of the Plaintist he not good and sufficient but in Ejectione firme, if the title of the Plaintiff be not good and lufficient, be the title of the Defendant good of not, he shall not recover: and afterwards Audgment was given tot the Defendant, Hill. 33. Eliz.

Mich. 32 & 33 Eliz. In Communi Banco.

CCXCVIII. Cheny and Smiths Cafe.

In an Ejectione firmæ by Cheny and his Wife against Smith: The Plaintiffs beclared upon a Leate made by the Hafter of the House of College of S. Thomas of Acons in London to I. S. who assigned it over to Knevic, who by his Milloevised the same to his Mise, whom he made also his Executric, and died, and afterwards the took to Dusband one VVaters, and died; VVaters took Letters of Administration of the Goods ers, and died; VVaters took Letters of Administration of the Stook and Chattells of his Alife, and afterwards lealed to the Plaintiffs: And upon not guilty they were at Issue. And it was given in Evidence That the Leale given in Evidence, was not the Leale whereof the Plaintiffs have pectated, for the oil inal Teale shewed in Court, is, Haster of the House, or Hopking, where the Leale specified in the Declaration is, Waster of the House or Colledge, 38 E.1.28. And some of the Justices conceived that there is not any material Austance (but if the parties would, it might be found by special Clerbia) For by them Colledge and Hospital are all one. And afterwards the Court moved the Plaintiffs to prove if the wife were in as Executive, or as Legative. tee, for by Anderson, and Periam, until election be made be half not be said to have it as Legatee, especially if it be not asledged in sac, that all the vebts of the Cestatorate past: And Anderson boubted, although that it be alledged, that the vebts be past. If the Executor shall be said to have the said Lease as a Legacy, before she hath made Election, vid. Weldens Case, and Paramours Case in Plowd. And afterwards it was given in Edibence, That the wife after the veath of the Husband had repaired the Banks of the Land, and produced Colitices to prove it, as if the same should amount to ciaim it as a Legacy; and the Court said, that that matter should be referred to she Jury: And it was surther shewed in Edibence, that the said Colife Executior, and her said Husband Waters sometly made a Lease by Deed, reciting thereby, that where the Husband vaspossesses a Legacy reciting thereby, that where the Husband vaspossesses as the triple of his said Wise as Executive of her sist Husband, are. And by the opinion of the whole Court, the same was an expecte claim as Executive; and then when the Colife view, if the Dushand would have advantage of it, he ought to take Letters of Administration of the Goods of her sist husband, and not of the Edise; but if she had claimed the Land and the Cerm in it as Legatee, and had not been in postession, Administration taken of the Assights and Debts of the Chiffe, had been good as to that intent, that his calife was not actually postessed of it, but only had a sight unto it, and of such things in Anion, the Husband might be Executed of Administration being taken of the goods of the Edise, where it should be of the Coods of the Cestatole the Husband is sho for this cause the Palainties were non-stat, and the Bury distance. And it was agreed by all the Rushand might bade made the Cleation in the Case aforeshap.

Mich. 32 & 33 Eliz. In the Common Bench.

CCXCIX. The Lord Cobham and Browns Cale.

The Cale between the Lad Cobbam and Brown, was, that the Abbot of Grace was leifed of the Pannoz of Gravelend in the County or Kent, which wannoz both extend to the Parishes of Gravelend, and Milton, and that the said Abbot and all his Predecessons, &c. time out of mind, &c. have had a Water Court within the said Pannoz, which Court had been holden at Gravelend Bridge in the end of it, and that all the Inhabitants within the said Parishes, which have Boats either entirely or iopntly with others, and have used to transport or carry passengers from Gravelend to London, &c e contra, and have used to tasken their Boats at the said Bridge of Gravelend, have used to do said at the said Court, and there have used to enquire of all suif-orders, and instruments of Water men there, and that the said Abbots, &c. have used to have the Fines and Americanness of the same Court, and converse the said Dannag to the Piaintist, and that at a Court there holden. The Describant being swam with the resoure of the Court there holden. The Describant being swam with the resoure of the Court there holden. The last contends, the Describant, by the then Drewnsh was american transport of such biffings, so the which smercement the Plaintist township and attend of Debt. It was made by Bramous Sergennt; Court before in an action of Debt. It was maded by Bramous Sergennt; Court before in an action of Debt. It was made by Bramous Sergennt; Court before in an action of Debt. It was made by Bramous Sergennt; Court of all the Inhabitants of the lasting to have the claims suited by the Court within his Pannoz, and as a thing appererming to the Pannoz, who as a thing appererming to the Pannoz, which do not have the lasting to all the Inhabitants of the lasting the Pannoz, a brich do not have the lasting to the pannoz, a brich do not have the lasting to the lasting to the pannoz both extends in

i Roll. 620.

in the faid Parishes, yet the same both not prove that every part of the law Parishes, yet the laid Wanoz, and if it be not so, the Pec-scription may extend as well to all the County of Kenn as well as to the said two Parishes, for such a Peckription cannot bind but those which are Tenants of the said Wanoz, and cannot extend to strangers, which fee 21 H. 7. 40. The Cale of Pound-breach. Secondly, it is not alleadged here, that the Steward ought and had used to affels Amerce alleadged here, that the Steward ought and had like to ancie americaments, for by the common Law no Steward hath authority to affels Americaments or Fines in a Court Baron, for there the Suitors are Judges 4 not the Steward; 4 that this Mater: Court is a Court Baron, it appeared by the Declaration, for there it is faid that it is a Court Baron, if the contrary be not the prima facie shall be meant a Court Baron, if the contrary be not shewed, vi. Fix. 75.9. Chirdly it is not shewed that the Americament was affered, which see ib. 75. Harris Cours to the contrary. This Tourt man the whole matter is in Serjeant, to the contrary: This Court upon the whole matter is in nature of a Leet for the reformation of mil-orders between the Materian, and the prescription here will warrant such a Court well emough, and there are many Courts in England which are not Court Barons, but grounded upon Prescription, 40 E. 3. 17. The Court befoze the Chancellor of Oxford, Prescription to have Swan mote, and it is reafon that this Prescription should hold place, for here is quid pro quo, for Whatermen receive their carriage and loading at this Bridge, and also discharge their loading there, and they use to fasten their Boats there, and therefore in lieu of that benefit, it is reason that they be attendant at the Court which is upon the laid Bridge, and upon that reason is the Prescription of Coll Cravelle, 5 H. 7. 9. And to have a Land Bird, 2 R. 3. 15. And Coll of every Aestel which passeth the Asver, 21 H.7.16. and this Court may be a Court within the Manoz, and yet no Court Baron, but in the nature of a Leet, and the Prescription shall be good in Law by reason of the recompence to the Buitors, and then, if it be not a Court Baron, but rather in the nature of a Teet, then it follows, that the Suitors are not Judges but the Steward; and it behoves not to prescribe for the Amercement, for that is incident to a Court Leet, for otherwise how can the Suitors be compelled to do their suit at it, or their defaults, or contempts at the same be punished? and as to the aftering of the Amercement, it needs not here, for it is a fine for the open contempt, and despite done unto the Court, and not an Amercement, and it may well be affested by the Steward alone, vi. 23 H. 8. Br. Leet, 37. Drill Serjeant, to the contrary: for this Prescription is not reasonable, to drive strangers to do suit at a Court Baron, for there is fufficient confideration in the Cale of Tenants of the Manozifoz it may be at the beginning, the Tenancies were given upon such consideration to do such suit: But in the principal cale, the Prescription is their ground, and therefore unreasonable, because without consideration, 22 E.4.43. see the case there, and 21 H.7.20. A custom alleadged, that if any Tenant distrain the Beasts of another Damage Featant, That he ought to bring fuch Beatls to the pound of the Lozd of the Panoz; and if not, That at the next Court he should be amerced twelve pence, and the same was holden no good custom, because against common Right and common Law. Puckering Serjeant: If this Court shall be reputed in Law a Court Baron, then the Prescription, sor the maner ofit is not good, for in such case, the Americannet cannot be assessed by the Steward; But he held, that this Court is in the nature of a Court Leet, and not a Court Baron, and a'l Inhabitants within the Precinct of it, are bounden to do their suit at it by reason of their Aesiancy, & their trade there, if they have Boats, or shares in Boats, and such Court is for the better government of such Aatermen, and the exercise and practile of their trade, and for the revelling of mildemeanors betwirt them, and so this Court hath a reasonable commencement, being

instituted for the publick good, and if cussoms which concern the private benefit of any de allowable; as the Agayor and Burgelles of a Cown prescrift to have of every Inn which connects in any Ship into their Port, and put upon the Land 6.d. for Coll. Set 2r H.16. A forcior, a Cussom or Prescription which concerns the publick good, is good; it is not strange that such Court hath been maintained by Prescription, for the Court of Scannerists so without any commencement or exertion, but by Cussom. And although that Toll cannot be pass at any Agarket for things brought to Barket, but for things soft, yet by cussom Cost that be pass for every thing brought to Agarket, and softhe Commonwealth, which thing is the ground of the Prescription in the Principal Case, a therefore the Prescription in the manner of it is good; and if the prescription be good for the Court, then to have a Steward keep the Court, to affect fines soft contempts and disposes for without any special prescription, sor it is incident to it. Periam Justice, If it he a Court-baron then cannot the Steward impose or alless any Fine: which Windham granted but he safe it is not a Court-baron, but a Court within his Manor, by prescription, which is not a Court-baron. Anderson was of opinion that it is not a Court-baron, for although it be appectatining to the Aganor, yet that is not any proof that it is a Court-baron. For a Leet may be appectatining to a Aganor. It was adjourned.

Mich. 32 & 33 Eliz. In Communi Banco. CCC. Green and Edwards Case.

1 Cro. 216.

Between Green and Edwards the Cafe was this, Land is demised to A for nine years, if he chall so long live, and if he die within the Term, that B. his Wife thall have it durante toto reliduo termini prædict. The Duf. band dieth during the Cerm: If the Wife hall have the relidue of the Cerm was the Quellion. And by Periam & Walmelly Justices, by the death of the busband the Term is determined, a thereupon nothing can remain elpecially by way of grant, but by way of Devile it might be. See 9 Eliz.253. A Leafe for forty years to A. if he thall live so long, and if he die within the Term, that E. his Wife thall have the recidue of the pears: Where it was holden, that by the death of A. the Term is de termined, and then there is no relidue, and to the Limitation is boid, vide 3 & 4 Phil. & Mar. 150. Anderson, If the Husband and Wiste had been parties to the Deed of Demile, then the readue of the Term should go to the Wiste after the death of the Pusband: and this word (Terminum) shall not be taken for the Interest which is given to the Pusband, but for the time, to it is as much as to lay, that if the Pusband die before forty years expited, that then his colife thall have the relidue for forty pears, and it is reason to make such construction rather than to construe the faid part of the Deed to be void: For if in the construction of this Grant, the Cerm shall be taken for the Interest, then the Limitation hall be void. And in all Grants, the Deeds thall be taken most beneficially for the Grantee, and most strongly against the Grantor, especially utres magis valeat quam pereat: And here are leveral Grants and leveral Terms: But if luch matter be limited to the Wife not named in the Deed, all is vold, forit is incertain when the Term hall begin, & it cannot best duting the particular Estate, and it is not certain, whether the busband shall survive the Cerm, or not. And by Walmesly Windham the faid Limitation is meetly boid: As if a Termet grants all his Term for so many pears as that be behind after his death, the same is a boid Seant, for the Lessee may over-live all the Term, and then

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it is incertain when it thall begin: And in this Cale this word, Term, thall be taken for the Interest, and not for time, vide 35 H.8.Br. Conditions 203.vide Co. 1.part, in the Sector of Chedingtons Cale, this Cale bouched.

Mich. 32 & 33 Eliz. In the Common Bench.

CCCI. Gawton and the Lord Dacres Cafe.

12 Debt upon Surplulage of an Accompt by Gawton, against George Lozd Daeres; It was said by Periam Justice, and not denied by any, that if I make J. S. my Auditoz, generally to take Accompts of all my Bayliss and Aeceivozs, that he is not a sufficient Auditoz without in Patent; soz when a man is made an Auditoz generally, he is an Officer, and an Officer cannot be without a Deed. But if a Bayliss, of Sec. rether be accomptable to me, it is as cleer on the other five, that I may appoint one to be my Auditozto take the accompt of him, pro has vice by wozd; which Anderson granted: But if he afterwards takes an accompt of any by soze oz colour of the sale Warrant without my Commandment, he is not a lufficient Auditoz to such intent, either to take the accompt, or to affels the arrerages if the accomptant be found in arrear, or to make allowance if he be found in Surplulage: And hy him, If one become my Bayliff of his own wrong, without my appointment, he is accomptable to me, but I am not compellable to make him any allowance for his Expences about my bulinels. And if I affign to fuch Baylist of his own wrong an Auditoz, he cannot make allowance of such Expences. Anderson, Is my Auditoz make allowance to my Baylist soz any collateral Expences, which he hatherpended in my affairs, which not concern my Panaz, whereof he is Baylist, such allowance hall not him me. And note that in this August he Baylist, such allowance hall not bind me. And note, that in this Action the Plaintiff beclared that he was Bayliff to the Defendant of certain Manors, Receiver of certain monies, and io retained, ad diversa negotia procurandum: And emonac compt the allowance was made unto him for his Board wages, and other Expences in civing Circa negotia. And by Anderson, these allowances: Len. 149. shall not bind the Defendant; for as Bayliss of a Manor, no Expences shall be allowed unto him, but those which the Bayliss hath expended within the Manor: And is I retain one to go about my business he is not accomptable. Windham, but I retain one to follow my business, and beliver to him many to disducte in such business, he is accomptable. Anderson, It is so truly, but it is not in respect of the said Retainer, but Devise. as he was Accesver, and if he expend more than he bath received, he doth it without Warrant and no allowance shall be made unto him. If the Bayliff be found in Surplulage in the conclusion of the accompt, the Auditoz ought to enter. Allocatur fuper determinationem Compt. in fitrplufagil, fo much for fuch and fuch Expences, allocatis allocandis upon the next accompt: But in this Cafeit appeared wonthe Evidence, that the Entry upon the foot of the accompt was, And to be is in Surplulage upon the determination of this accompt twenty fix pounds: But the Auditor being examined, faid, that it was not his meaning to altow unto him fo much, but only to find and express the certainty of the whole accompt, and so refer the allowance of it to the Defendant to whom he was Auditor: and upon that the Court said to the Jury, if they believed the Auditor, that they should find against the Plaintist, for upon the matter beteis not any accompt, and to no allowances for the allowance if it had beenaccording to Law ought to be entred, before Allocatur, ecc. and fuch allowance is as a Judgment, but here is not any allowance, for the Auditor did refer the fame to the Defendant: But if the Jucy doth not give credit to the Auditor, then the Court moved the Jury to find ft 2

Mich. 32, & 33 Eliz. In the Common Bench.

CCCII. Chamberlayns Case.

Owen. Rep. 124 1 2 Cro. 148.

220

Cattel taken in Withernam, worked. 3 Len. 235. 236.

In this Cale it was moved, whether Beaffs taken in Withernam, might be uled and worked by the party as his proper Beaffs: And it was late by the Court, that Beaffs distrained, as Cows, could not be milk ed, not Porfes wrought, but they ought to be put in the Pound open, and there the Owner might milk them and fodder them. But if Cows be taken in Withernam, because they are delivered to the party in lieu of his own Cattel, he may milk them, or if they be Oren, or Horles, reactionably work them, otherwise he should be at great charges of keeping and pasturing of them, and no prosit, or consideration for it. Anderson, It should be a great inconvenience to the Common-wealth: For if the Cows are not milked, the milk is lost, and also the Cows impaired thereby.

Mich. 32 & 33 Eliz. In the Common Bench.

CCCIII. Byne and Playnes Cafe.

Affumplit. 1 Cro. 218.

n an action upon the cale by Byne against Playne, the Plaintist declared, that whereas he himself had recovered against Thomas Ward in the Court of the Queen in Southwark, holden befoze Omesley Steward there for the Mapor of London, the sum of twenty pounds, and had obtained out of the said Court a Lavari sacias directed to the Baylist to do execution upon the Soods of the faid Thomas Ward, which then were in the possession of the said Plaintist; and where the said Baylist by vertue of the said Witt was ready to have done execution of the said Soods, the Defendant came to the now Plaintist, and assumed to him, that in consideration that the said Plaintist would beliver to the Defendant the said Goods, that he would in fourteen days after Michaelmas next pay to the Plaintist wenty pounds, or otherwise deliver to him the said Goods again, if in the mean time no other makes Title unto them, and prove them to be his own Goods. And further, that the Plaintiff hall have free ingress and regress to a Chamber in the house of the Defendant in the mean time. And upon Non-assumpsic pleaded, it was found by the Jury, that such a Accovery was in the laid Court, and that the Defendant bin assume, are But they further say, that before the said Accovery, the said Thomas Ward was possessed of the said Goods as of his own proper goods: And, by Deed indented, sold them to his Brother R. W. in consideration of a certain sum of many, with a Proviso, that the said Tho. Ward, notwithstanding the said sale should have the possession of them for sour years, which are not pet expiced, paying to the said R. VVard twenty shillings by the year, and is, at the end of the said sour years, the said Thomas did repay the said sum of many to the said sour years, the said Thomas did repay the said sum of many to the said sour years, the said sale should be void. And they further say, that the said sale. Exception was taken to the Declaration, because it was not shewed by what Authority or Title the Court was holden; Also it sheweth, that the Bayliss was ready to do Execution upon the said Goods, but both not again, if in the mean time no other makes Citle unto them, and probe

not thew where the fait goods then were, but the exceptions were not allowed, for these matters are but inducement and conveyance to the allowed, to these matters are out moucement and conveyance to the action, and not the matter, or substance of it. Another exception was taken, because the request is not sufficiently alleadged, Licer sepies requificus, but that exception was not allowed, for here the Assumptit is to pay at a certain day, and then the request is not material; but where a sequest is parcel of the Assumptit, there an express Request ought to request. As if the payment should be upon sequest. As to the matter in Lain here is not ann consideration, for the goods were not where to in Law, here is not any confideration, for the goods were not subject to execution, for Thomas Ward had but a special property in them, but the general property was in R. VVard, and so no cause to deliver them back ro the Plaintiff; and here by the Clerdia the fozain title is proved; for proof ought to be by Clerdia, which fee Perk. 154.a. & 7. R. 2. Tic.Bar. 241. For it appeareth, before the said Accovery, Thomas sold the goods with promise, utsupra. Owen, Although it be found that R. VVard had the general property, pet Thomas had the special and present property, and that against R. VVard himself, so that during the said four years R. VVard could not entermeddle with the goods; and though that no execution can be had against him who hath lucha special property, yet that is not the case here, for here one who hath the possession of certain goods, dethe case here, for here one who hath the possession of certain goods, delivers them to another, and in consideration thereof, he to whom the velivery is made, promise to re-deliver them unto the Bailee, or to pay so much mony, this is a good consideration, when a lawful property or title he hath who makes the Delivery. And of that opinion were all the Justices, for it appeareth, that the Plaintist had a possession of the said goods, and that the said Thomas Ward had a special property, and because of such possession was chargeable to an action of the said Thomas Ward, be it that the Plaintist comes to the said goods by baylment or Trover, sor by Periam, it goods come to another by Trover, and he delivereth them over, he is answerable to him who bath right unto them: The them over, he is an swerable to him who hath right unto them: The Delivery of these goods to the Defendant, is a good consideration, and the Defendant hath benefit by the use of them, and the property of the goods is not to be argued in this case, but the Delivery to the Defendant is the only matter: And because the Delivery of the goods to the Defendant, and the Astumplit upon it, it was holden, although the goods were not liable to execution, yet the Astumplit was good, and afterwards Judgment was given for the Plaintist.

Mich. 32 & 33 Eliz. In Communi Banco.

CCCIV. Vandrink and Archers Cale:

V Andrink brought an action upon the case against Archer, and declared, Trover and that whereas he himself was possessed of twenty Ells of Linnen convention. cloath, as of his own goods, the same came to the hands of the Defendant by Crover, and he knowing the said goods to be the goods of the Wateriff. Colorhem unto persons unknown, and the many thereof the bant by Crover, and he knowing the laid goods to be the goods of the Plaintiff, fold them unto persons unknown, and the mony thereof proceeding did convert to his own use: The Defendant pleaded, that as to twenty sour Ells of the said Linnen cloath, long time before the sour sing, one Copland was possessed thereof, ut de bonis suis proprijs, and sold them Ante. 189. to the Defendant, who before any notice that they were the goods of the Plaintiff, & before any request, sold them to persons unknown: And as to the other three Ells, he was always ready to deliver them to the Plaintiff, and yet is, and upon these Pleas, the Plaintiff did demut in Law. Owen Serjeant, so the Plaintiff, That both Pleas are insufficient, the first Plea is not an answer but by argument, so the Plaintiff declares of a commission of his own goods, and the Defendant answers to a commission of his own goods, 33 H. 8. Br. Action fur

fur le case, 109. In an action upon the tase the Plaintist declares, that the Defendant found the goods of the Plaintist, and delivered them to persons unknown, Non deliberavit modo & forma, is no Plea, but he ought to plead not guilty; and in an action upon the cafe, the Plaintiff declar. ed, that he was possessed of certain goods, ut de bonis suis proprijs, and the Defendant found them, and converted them to his own use; It is no Plea for the Defendant to say, that the Plaintist was not possessed of the last goods as of his proper goods, but he ought to plead not guilty to the mil-vemeanoz, and give in Evidence, that they were not the goods of the Plaintiff, and 4E. 6. Br. action upon the case 113. The Plaintiff declared that he was possessed of certain goods as of his proper goods and lost them, and the Defendant found them and converted them to his own use; the Defendant pleaded, that the Plaintiff pawned the faid goods to the Defendant for ten pounds, for which he detained them according to the laid pawn, and traverled the conversion; and by some it was holden, that he ought to plead not guilty, a give the especial matter association Evidence; and 2 & 3. Phil. and Ma Dyer 121. The case of the Lazd Mountegle, in an action upon the Cale, the Plaintiff declared of the Ladd Mountegle, in an action upon the Cale, the Plaintin beclared upon a Crover of a Chain of Sold, and that the Defendant had fold it to persons unknown, the Defendant pleaded, Chat ipse non vendidit modo & forma, a upon that the Plaintist did demur in Law. And see 27 H.8.13. Where goods come to one by Crover, he shall not be charged in an action, but for the time he hath the possession; But that is to be intended in an Action of Detinue, and notin an action upon the Case, for such action upon the Case is not grounded upon the Crover, but upon the action upon the Case is not grounded upon the Crover, but upon the misseneancy, that is, the Conversion. And as to the other Plea it is attern insufficient, for the Plaintist pelares of a Conversion, and he utterly insufficient, for the Plaintiff Declares of a Conversion, and he pleads a possession, that he is always ready, and so both not answer to the point of the action. Yelverton Serjeant, to the contrary, and he conceived for the first Plea, that it is a direct answer, for he hath justified his sale to persons unknown, for that he hath bought the goods of one Copland whose goods they were, and because the Plaintiff hath demurred upon the Plea, he hath consessed the truth of the matter contained in it, soil that the property of the goods was to Copland, and so in Defendant by the said sale, and then he both good cause to convert them to his own use by sale or otherwise; and he conceived, that there is a difference, 27 H.8.13. betwirt Baylment, and Crover, for in cafe of Crover, the party is not chargeable but in respect of the possession, which being removed, the action is gone against the finder, for he who findeth goods is not bound to keep them, nor to give an account for them. And he put the case reported by Dyer, 13 & 14 Eliz. 30£, 307. R. Fines brought an action upon the cale, and declared, he was potteffed of a hawk, as of his proper goods at W. and calually lost it at B. and that it afterwards calually came to the hands of the Defendant by Trover, and that he knowing it to be the Plaintiffs hawk, fold the same for mony to persons unknown; The Defendant pleaded that the hawk mony to persons unknown; The Desendant pleaded that the spawk first after the losing of it came to the hands of one Jeostryes, who sold it to one Rowly, who gave it to the Desendant at A. who sold it to Pouton, and the same was found a sufficient Bar; and it is hard where goods, as Oren of Hogles come to another by Crover, that he should be charged to keep them and passure them until the Owner claimeth them, and therefore it is not reason but that he discharge himself by the quicting of the possession of them. And as to the other Plea, the matter of the Plea is good enough, and the desert is but in the form, which because the Plaintist upon his Demurrer hath not shewed to the Court according to the Statute, he shall not take advantage of it, but the matter of the Plea is sufficient, soil the sinding, and the offer to deliver it to the Plaintist. Anderson Justice, For the examination of the insufficiency of this Plea, the nature of the action, and the

the cause of it is to be considered; the nature of the action, it is an action upon the cale, the caule, the Crover, and conversion; Then for the latter Plea his readineds, to deliver it, At cannot be any answer to the Declaration of the Plaintiff: For this action is not Debt or Detinue, where the thing it self is to be delivered, for in such case, the Plea had been good, but the Conversion is the special cause of this Action, which by this is not answered, and for the other Plea, the Declaration is not answered by it. But here is some matter of justification, for where man comes to goods by Trober, there is not any doubt but by the Law he both liberty to take the polletion of them, but he cannot abute them, kill them, or convert them to his own use, or make any profit of them, and it he do, it is great reason that he be answerable so, the same, but if he sole such goods afterwards, or they be taken from him, then he shall not be charged, so, he is not bound to keep them, and so he conceived Judgment ought to be so, the Plaintiff. Windham Justice, neceived subject to the so, the Plaintiff. ther Plea is good; as to the first Plea, he confesseth the conversion, but hath not conveyed unto himself a sufficient title to the goods by which he might juffifie the Convertion, for the Plaintiff declares of a converfion of his own goods, and the Defendant justifies, because the property of the goods was in a ffranger who fold them to him, which cannot be any good title for him without a Craverle, untels he had shewed, that he bought them in an open Warket, and then upon such matter he might well have justified the Conversion. And as to the other Pleasthe fame is naught also, for the goods are not in demand, and their the tald Plea is not proper to fay, that he is ready to deliver them, for danuages only for the conversion are in demand, and not the goods themselves, and therefore the same is a Plea but by Argument, soil he is ready to deliver, Ergo, he both not converted, and pet the fame is not a good argument, for if a man find my botte, and rives upon him, or hereby he becomes Lame, or otherwise by excessive travel mis-useth him, so as my Porse is the worse thereby; we may be ready to beliver me my Hogle, and pet this action will ly, for fuch an abuting of the borfe is a Convertion to his own ule. Periam Juffice, The latter Polt. 224 Plea clearly is inlufficient, for it amounteth but to Not guilty, but for the first Plea, he doubted of it, for first the property is not traversable, nor the knowing; but upon the general Issue pleaded, such matter may be given in Evidence. And he conceived, Chat where a man buyes may be given in Evidence. And he conceived, Chat where a man super goods of one who comes to them by Trover, that he may fell them, and shall not be answerable for them. And although it may be said, that the said matter may be given in Evidence, yet it is not good to put the same to the people, but to refer the matter to the Judgment of the Court. Walm. Justice, The latter Plea is clearly insufficient, but so the first he doubted of it, so he conceived that the sale of the goods is not a Conversion. Anderson, The sirst Plea is, us super, and nothing in that is material or traversable, so all the Plea may be true, and yet the Desembant is guilty, so it may be that the Desembant is guilty. the Defendant is guilty, for it may be that the Defendant himfelf fold them to the Plaintiff, og to another who fold them to the Plaintiff, and that afterwards the Defendant found them, and here the Convertion is confessed, and not to voided by sufficient justification, and by him, the fale to perfons unknown is no good Plea, for his fale is his own Act, and it cannot be but be must have notice of the buyers, and therefore he ought in his Plea to them their names. Periam, Contrary to that matter as to the naming of the buyers, forit should be an infinite thing for a Daper to take notice of every on who buyeth and Ell of Cloath of bun. And afterwards the same Term Judgment was given for the Plaintiff upon the infufficiency of the Plea.

## Mich. 32 & 33 Eliz. In Communi Banco.

CCCV. Walgrave against Ogden.

Trover and Conversion. 1 Cro. 219. A paction upon the case was brought upon a Trover and conversion of twenty barrels of Butter, and declared, that by negligent keeping of them, they were become of little value, upon which there was a Demurrer in Law: And by the opinion of the whole Tourt upon this matter, no action lieth; for a man who comes to Goods by Trover, is not bound to keep them to safely, as he who comes to them by Baylment. Walmesley, If a man find my Garments, and suffereth them to be eaten with Boths by the negligent keeping of them; No Action lieth: but if he weareth my Garments it is otherwise, for the wearing is a Conversion.

Ante 223.

Mich. 32 & 33 Eliz. In Communi Banco.

CCCVI. Alexander and the Lady Greshams Case.

Debt for arrerages of annuity.

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Devifes.

2 Cro. 139. Ante. 87.

Lice Alexander, Administratrix to her last Pusband, brought an Action of Debt for the arrerages of an Annuity, against the Lady Greiham, Executiv of Sit Thomas Greiham het late Dusband, incurred in the life-time of het late Dusband Sit Thomas Greiham: The Defendant pleaded, that the had fully administred; The Plaintist replyed, Assets, icil. Chat the Defendant had divers Goods in her hands not adminifired, which were the goods of the laid Sir Thomas at the time of his beath, upon which they were at Mue. And it was found by special Aerdia, that Sir Thomas Gresham being seised of divers Wandes and other Lands in fee, devised them by his last Will to his Wife the Defendant, to use at her own pleasure: And by his said will refer be the Defendant, to use at her own pleasure: And by his said will refer be the Defendant. fendant, to use at her own pleasure: And by his said colill requested his Wife to pay his Debts and Legacies: and further it was found, that at the Parliament holden 22 Eliz. a pivate Act was made, by which it was enacted, that the faid Lady should take upon her the charge of all her pushands Debts, and for the discharge thereof, the thall sell to much Land as will yield to much mony as will ferve for the payment of the lato Debts, and if the thall fail therein, that then certain Commissioners thall be appointed for the fale of to much Land, &c. and for all fuch Debts as the faid Lady hould not acknowledge to be good & true Debts, that then the Creditors to whom they were due, hould repair to the laid Commissioners, and they should determine both of the certainty of the sum of the due Debts, and of the Damages for the forbearing thereof: and that afterwards the laid Creditors should have their remedy against the faid Lady for such sums of mony to agreed upon by the faid Commissioners: and found the Statute at large, and that the faid Lady Gresham had fold certain Lands parcel of the Possessions of the said Sir Thomas, by which sale she had received the sum of twenty thousand pounds, which yet is unadministred for the greatest part of it. And if upon the whole matter the laid fum of twenty thou fand pounds be Affets, then they find for the Plaintiff, but if not, then for the Defendant.

And it was moved by Hammon Serjeant, that here is affets upon this matter, and that by the Common Law, for it appeareth upon the Will, that the Lands were deviced to the Lady, to the intent that the hould pay his Debts. And although the words of the Charge are, that the Ceffator requests the Lady to pay his Debts, the same in a Will doth amount to Condition, and so the meaning of the Devisor appeareth to be, that the

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new undich is levied by lack finis shall be Assess, at. 2 14. 21, 22. A must assess makes a Feositivest in Fee to divers personneuty on condition that they sell the Lands, and the money thereof commit distribute so, his Soul is The Feosite, the Feosites (who were also Executors of the Fee offic) sell the Lands, the money thereof commit is admired assess. And see 4 16. 2. And although it be not Assess by the Committed Land, roll, part 1, yet it is assess by the special distribute, which appears, that he shall be 9200, therefore with the Debts, and chart he Lands shall be soil. And it was sound by the clerate, that keep Lands were soil, must be shall be 9200, every own the sale, which are administrate. And although the sale twenty thousand pounds were never the course of the Cestator, just any the Case is, 9 16.8. If Executors recover Danages in trebutes of Gade taken away in the life of the Cestator, but Danages in recover overed are assessment in the course proper Gade, the same is assess in their own proper Gade, the same is assess in the Executors taken of one who was ney which is levied by fact fale thall be affets, 35, 2 H.a. 21, 22. A men Affecs. of Sous taken away in the life of the Cellatus, but d'Amages de ecovero nee Alets. So if Crestions revern a Pienge with their wind proper Gwobs, the Same is Alets in chete hands, by Kughadi, Vassam, and Fider, 20 H.7 as. And where the Executors tak of me made now invelted to their Cellator in a kindle Contract, the finnesis Mitets, 3. E. 3. And fee many Cales of live herein Alets, 7. Sila. In Plowdom Commen in Chapman and Dahous cale, 230. It said been absence, that the Declad Allets enacted by Parliament, do not maintain the present Allets intended in the Almedat be conceived the fame is well enough. Is 27 H 8.21. In an Action upon the Datatute of 2 H.8. for that the Defendant hath accupied kand to farm against the Souther. The Defendant pleaded, Non tendir ad firman contra forman Saturi. And gave in Collegence, that he dad calcute of Farm for the maintenance of his bonde she lame is a god Colorec, and had maintain the Illie. In he mo hat accupe against the form of the Statute. In 1904 the Datatute to that purpole. Packeting Schrönt to be reductable, the hot of accupe against the form of the Statute. The first had like the Hall maintain the Illie. The hot of accupe against the form of the Statute. The first had like the hot of the Statute. The first had like the first had like the first had not cale and antage of the first all like the first had not cale and antage of the first all like the first had been an accuping the Commissioners aught to determine with, and added damages laying the like had been any been the Statute. And had added damages laying first had been the Statute. And had added damages laying first had been the Leving for the Commissioners are composite the Televine had been appoint to be acceptable to the Lambs, so have been remembed by the first had been appointed to the Commissioners are composite first had been had been appointed by the Cecanism find the last had been and been appointed by the Cecanism find the last had been and the last had the last had been had been appointed by the Cecani

Plaintiff ought to have shewed the same in his Declaration, and then to have maintained against the Defendant the said special Assets upon the Statute: As if in Debt upon an Obligation, the Defendant will plead, Non est factum, and give in Evidence the Statute of 23 H. 6. the same shall not maintain his Plea of Non est factum; but he ought to have pleaded the special matter in Bar. And see 4 H. 7. 8. So the Plaintiff here ought to have in her Replication shewed the especial matter upon the Statute. Anderson and Walmesly conceived, that the same is Assets within the Stat. and that the Defendant is chargable as Executric, otherwise there is no remedy, and the Ac consums her to be Executric, and ordains, that she shall take upon her the charge of payment of Debts, and that the Soods and all the Monies which come by sale of the Lands and Moods shall be assets. And because that by the said Act the money coming by sale of Moods and Lands are sopned together with the Soods of the Testator in the same plight, all are in the same degree, and both equally Assets. Periam did not speak to that; but Windham held, Chat these Assets sound by the Aerdia, are not Assets intended in the Wisil, and that the Plaintiff bath not pursued the Statute, which makes such matter Assets. It was adjoined.

Pasch. 33 Eliz. in the Common Pleas.

CCCVII. The Queen and the Bishop of Yorks Case.

Quare Impedit. 7 1 Cro.240.

Collation gains not the Patronage of the King. 6 Co.50.2.

The Dueen brought a Quare Impedit against the Bishop of York, and one Monck; and counted upon a Presentment made by him, Hen. s. in the right of his Dutchy of Lancaster, and so conveyed the same to the Queen by descent: The Bishop pleaded, that he and his Predects so have collated to the said Church, etc. and Monck pleaded the same plea, upon which there was a Demutrer. And it was moved by Bearmont Serjant, Chat the plea is not good, so a Collation cannot gain any Patronage, and cannot be an Alurpation against a common Person, much less against the Dueen, to whom no Lapsesshall be asserted and although the Queen is seised of this Advocution in the right of her Dutchy; yet when the Church becomes bodd, the Right to present bests in the Royal person of the Queen: and yet see the old Register 1. Quando Rex presentat non in jure Corona tunc incurric eitempus. Hammon Derson, By these Collations the Queen shall be put out of possession, and put to bet Arese Collations the Patronage to himself, so such a Collation of the Arese of Arese as Patron, claiming the Patronage to himself, for such a Collations pleaded, which should put the Queen out of possession, and both and other accounts to a Presention; and here are time of these Collations pleaded, which should put the Queen out of possession, and the shall not be bound by the sirst during the life of the sirst Incumbent. Vide Br. Quare Impedit 31. upon the abridging of the Case of 47 E.3.4. That time Presention put him to his Price of Right of Advoction, which Anderson benied. And it was holden by the whole Court, here is not any Presentation, and there is a great difference between the hims out of possession, and then no possession gained by the Collations and although the Bishop date on the Bueen hat the Aueen by the right of the Church to the Parlon, and Presentation, for Collation is a giving of the Church to the Parlon, and Presentation, for Collation is a giving of the Church to the Parlon, and Presentation, for Collation is a giving of the Church to the Dutchy,

Plenarty no Plea against the sting. And afterwards Exception was taken to the Clirit, because it is not set forth in the Clirit how the Queen claimed the Andomson; as inhere the Ising had Right to present by reason of the Temporalities of the Bishop in his hands, the Clirit shall say, asione Archiepisopaus Cant. nunc Vacant. Of Ratione Custodie: And so because this Advanced is parcel of ber Dutchy, the Wirit sught to say so. And Anderson thief Justice was of opinion, that the Wirit was good enough, notwithstanding the want of that clause, Razione Ducaus, so, both ways it is good, and sufficient, generally of specially as where a man bath an Avbowsan in the Right of his Wisice, and the Dusband brings a Quare Impedia, the Wirit half or his cettle, and the Dusballs daines a Quare impedic, the altert mail be general, ad suam special. Donationem, without the mentioning of his calife. See the Book of Entries 483, the Merit is general, but the count is special. And there is the very case of the Dutchy of Lancaster, and then the Merit is general, but the count is ratione. Ducatus su Lancaster. And such an aboldance of a Church, parcel of the Dutchy, may be granted under the Syeat Seal: And see the case of the Dutchy of Lancaster in Planeter the Syeat Seal: And see the case of the Dutchy of Lancaster in Plowden to that purpose; and afterwards a President was shewed, in An. 32 H.6. where the Wirt was general, and the Count was Ratione Ducatus.

## CCCVIII. Pasch.33 Eliz. in the Common Pleas.

A Mary, for one and twenty years, without the wing the certainty at which fealts the Annunciation, Purification, &c. pet the Leafe is good enough, and the Leafe may determine the certainty of the beginning of the Cerm by his Entry, at which of the law fealts the law Cerm thall begin, by Anderson theeff Justice; but Periam doubted of it.

Pasch. 33 Eliz. in the Common Pleas.

CCCIX. Blagrave and Woods Cafe.

Le an action of Trespass brought by Blagrave against Wood, of Lands Surrender to in Toxing in the Country of Surrey, concerning a Surrender made out of the use of Six Thomas Holcroft, by Alke Pagnam, 7 E. 6. before one Forcer then Steward there: The Islue was, If at the time of the said surrender, the said Forcet was Steward of the said Hand. And the Justy sound a special dervice, sich of bat the said Forcet circa Aprilis, 7 E. 6. was retained by one Elizabeth Pagnam, then, before and afterwards Lady of the said Hand, to be ber Steward there for the heeping of the courts of the said Hand; and this Retainer was only by Mord in the Courts of the said Forcet according to the said Retainer, had kent Courts there diversities and surface of the said Forcet cook a Surrender, which was entred in the Rolls the next Court: and that before that and after he took divers Surrenders as well out of Court, as in Court, and was entred in the Rolls the next Court: and that before that and after he took divers Surrenders as well out of Court, as in Court, and had holden divers Courts there. And upon this Aerdic, it was moved by Snagg Serieant, Chat Forcet upon the matter found by the Aerdic is not luch a Steward that may take Surrenders, out of Court, being retained only by word, although to be other acts in Court he be a difficient Steward, for in the Court he is as a Lunge, and no body is to diffuse his Aurhority there. And there is a great inference hetwit a Steward of a Banor, and a Steward of Courts, and a Steward of another Banor, for a Steward of a Banor way take Surrenders is another Banor, for a Steward of a Banor way take Surrenders is any place, otherwise is where a Steward is retained to keep courts,

VideCo.4 part. 30. Dame Holcrofts Cafe.

Courts, for he hath no authority to keep Court, and all his power is within the Court, and not without. See 8 Eliz. Dyer 248 Drew Serjeant to the contrary. Here Forcet upon this Retainder was Steward at the Mill of the Lady of the Banor, which will half not be faid to be determined, until the Lady both discharge him: and the difference which hath been taken betwirt Steward of Courts, and a Steward of a Banor is nothing to the purpose, for there is not any reason in it: and it is true, an Affile cannot be brought of such an Diffice, without a Patent of it, for it cannot pass for life without a Deed; and although a Steward in the Courts of Copyholders be a Judge, yet he may be appointed without Deed: as where two submit themselves to the arbitration of others, now the Arbitrators are Judges as to to the arbitration of others, now the Arbitrators are Judges as to that intent, and pet they may be appointed Arbitrators, and dicharged without Deed, 19 H6.6. 5 E.4.3. 21 H.6.30. but they cannot by their award transfer free-hold from one to another, 21 E.3.26.14H.4.18 and 17. by Culpeper and Skreen; and see as to a Steward retained by word, 8 Eliz. 248. and see 12 H.7.25, 26, 27. where a Bayliff of a Manor may be appointed without Deed, and so of an under Sheriff, and yet he is a Judge. Owen Serjant contrary, here Forcer at the time of this Surrender was not Steward, but the Retainer void. 1. Mo fee is allowed unto him for the exercise of the said Office, 3 H.6.A Labourer may be retained without promise of any Sallary in certain, for it is appointed by the Law. 2. He is not retained by Deed, and although he may be retained without Deed to hold Court, pro hac vice, yet if the Retainer be sor life, or sor years, it ought to be by Deed. 3. He was retained to keep the Court, but not to be Steward, high without he was retained to held Court, and then when that is not high authority should retained to keep the Court, but not to be Steward, which hall be intended to hold Court, and then when that is past his authority shall cease, and then all which he doth asterwards is void. But if he had been retained to be Steward of the Manoz, then the Surrender taken out of Court had been well enough. 4. There is not any custom found by the Aerdick, to warrant such a Surrender taken out of Court, and then if the Surrender be not warranted by their custom it is void. Velverton to the contrary, In all cases in real actions which concern Lands, the Surrender be Indiges; but in personal actions under the sum of forty stillings the Steward is Judge: and although he be a Judge, yet he may be appointed without Deed. And whereas it hath been objected, that no fee is appointed by the exercising of the Office, the same is not material as to the Grant, but the party is not compellable without a fee to bo the service: and a man may be constituted Baylist of such a Manaz without Deed, and yet more doth appertain to the Office of the Baylist, than to the Steward:

\*More i Rep. as if the Lord of a Manoz be beyond the Dea, "the Wistit of Right shall be directed to the Baylist of the Manoz: and see 21 H. 7. 36, 37:

There is the Lord of a Manoz be beyond the Dea, "the Wistit of Right shall be directed to the Baylist of the Manoz: and see 21 H. 7. 36, 37:

There in the principal case, the Retainer is not to keep one Court, but to keep the Courts of the Lady of the Manoz, Salall her Courts, until he be discharged. It was adjourned. until be be vilcharged. It was abjourned.

Pasch. 33 Eliz. In the Common Pleas.

OCCX. Afcew and Fuliambs Cafe.

Andita Quere-1 Cro.233.

A Seew was bounden by Statute to Fuliamb, and there was not two Seals put to the Statute, and Execution was fued upon the fair Statute, the Conusor brought an Audica Querela, and they were at Iffine, if two Seals were to the laid Statute, and tried by the Plaintiff in an Audica Querela by the Sheriff of the City of Lincoln; And it was moved by Glanvil Serjant, Chat the Mue ought to have been tryed by

by the Certificate of the Dapoz of Lincoln, befoze whom the acknowledgment was, and not by Jury, which was denyed, for the Iffue is not
whether any such Statute was acknowledged or not, but whether the
Statute in question hath two Seals or not, and that is not recorded by
the Dayoz, as the Statute itself is: Another Erception was taken, It
appeareth by the Dargent of the Record, that the Issue was treed by the
Country of Lincoln, where it ought to be treed by the Country of the City
of Linc. for Lincolly is in the Dargent. But to that it was laid, that such
is the usual form, to which the Preignorthories agreed, and the Book of
18 E 3.25, was urged, where execution of Lands of the Conusor was awarbed upon a Statute Werchant, and the Statute was to pay, &c. 16 E. 3.
But the Original strict which issued to take the body of the Conusor was
14 E 3. And upon that Error brought: And the Court agreed that case,
but these two cases do differ, for there the Process was misawarded, not
so here: And although a strict of Error may lye, yet the same both not
prove, but that an Audica Querela may lye also: And afterwards Judgment was given for the Piaintiss.

Pasch. 31. Eliz. In the Common Pleas.

CCCXI. Jennings and Gowers Cafe.

In the Case betwirt sensings and Gower, the words were; Chat if the construction would permit one Wasto enjoy such a Term for the Devisor would permit one Wasto enjoy such a Term for the Cerem of three years next following, that then the should have all the restoute of his Goods and Chattels as his sole Executir; so, Anderson thief Justice conceived. That she should not be Executir; so the is to be Executir; upon a condition precedent to be performed before that he be Executir; and the condition is impossible to be performed, and then the shall never be Executir; so where an estate is to be created upon a condition impossible to be performed, there ethe estate shall never to come in estand here the condition is impossible, so how can she suffer was to empty the Term so; years, next following, the 3, years sught to be passible to be and between he has any power, either to permit, or resist, for until the three years be encurred, she cannot be Executrix, not before the three years expired can she bring any action as Executrix, softer authority both not begin before the three years be expired. Walm Perix Wind. contrary. Although a grant upon a condition precedent both not take esser until the condition be performed, yet such a construction ought not to be used in this case, to the intent of the Devisor in this case shall stand: It he condition had been, that if the wise will snot meat and drink to such a person until his beach, That then the shall be Executric, shall not the Case so the will snot meat and drink to such a person until his beach, Chat then the shall so were any example though commit Administration of his goods in the mean time: And afterwards Anderson changed his opinion, and agreed with the other Justices: Periam, The subsequent words probe directly that the meaning of the Cessard was, to make his allies Executrix immediately, until she were diffurbed by the sais was, for the words are, that if the resule to suffer the safe,

another day Judgment was given for the Wife; That the was Erecutrip presently, and her authority thous not expect until the three years were expired if not that any actual disturbance can be proved to be or bave been made by the Wife against the Will of the Devisor, and the words of the Will, will receive such construction, that she shall be Executric until an actual disturbance of Wats.

## Pajeh. 33. Eliz. in the Common Pleas.

OCCXII. Palmes and the Bishop of Peterboroughs Case.

Quare Impedit. 1 Cor.241,

In a Quare Impedit by Margaret Palmes against the Bishop of Peterborough, who pleaded, Chatthe Plaintist out prefent unto him one I. S. of who pleaded, Chatthe Plaintin old prefent unto him one i. S. of whom the Bishop asked if he were within Orders; and if he had his Letters of orders, and because the Presenter could not show the Bishop his Orders, he refused him: And commanded him to come another time and show to him his Orders, and that the Presentee did never do it, nor offered to the said Bishop his said Orders, without that he did disturb him in other manner. And by Periam and Anderson it is no Plea, for upon his own shewing the Desenvant is a disturber: for although that the Statute of 13 Eliz requires that no man shall be admitted to a Benefice with cure of souls, if he he not a Descan part the Statute dark Benefice with cure of fouls, if he be not a Deacon, yet the Statute doth not extend, to compel the Clark to them his Orders, and therefore when

Refufal of the Bifhop. Degg.75.

he for fuchia krivilous cause both refuse to admit him, the same is a disturbance. And afterwards exception was taken to the Count, because that the Plaintiff being Cenant for life of the Advowson of the gift of the Husband, had not alleadged any Macsentment in her busband, or any of his Anochors, but only in her self: But that was not allowed, for

that point hath been lately over-ruled in this Court, in the case betwirt specot and the Bishop of Exercite 8 H.5.4 adjudged accordingly, Vi.9 H.7. as And the clear opinion of the Court was, that the Count was good motwithstanding that exception: As to the matter of the Plea the Court doubted of it, so, the Plea was, that the Bishop demanded, of the clerk presents, his Letters of Deders, and Letters Testimonial, of his good behaviour, and his Letters Histor, and he bid not shew them but requested of the Bishop the space of a week, to satisfie the Bishop in those points, which was allowed unto him, but he never returned, so which cause the Bishop afterwards resuled, &c. And it was said upon that Plea; that the Ctark who is presented, ought to make proof to the Bishop that he is a Deacon, and that he hath Orders; otherwise by the Statute of a; Eliz, the Bishop is not bound to admit such Clark, but the Statute both not compel the Clark to shew his Orders, so, perhaps be bath lost them, but how his Orders should be proved, it was much doubted: Anderson, The Bishop may examine him upon oath, if he hath Orders or not; But as to the Letters Testimonial of his good behaviour and lassiciency, the Bishop ought to examine the same himself, and if he give day and defer the Admittion because he is not resolven therein, he is a Disturber if the Clark come to him in a convenient time: And the Bishop cannot result a Clark south the want of Letters Testimonial. notwithstanding that exception : As to the matter of the Plea the Court

Degg.75.

Pafeh.33 Eliz. in the Common Pleas.

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CCCXIII. Linacers Cafe.

on our . Here In an Audica Querela brought by Linacer, It was lath by Anderson chief Justice, Chat if a man be in execution by his Body and Lands 1 Leon. 96. Co.5.Rep. 86. upon

to the want of Letters Testimonial.

Both of at the and

upon a Statute; If the Sherisf permit the Conusoz to go at Liberty, pet the Execution of the Land is not discharged; But if he go at large by the consent of the Conusee, then the whole Execution is discharged: And the Conusoz shall have his Land again presently:

Pafch. 33 Eltz. In the Common Pleas.

CCCXIV. Brownfall and Tylers Cafe.

be Tale was, that Tenant in tail brought a Writ of Entry, Sur diffeifin and the Watt was general, and it was moved, if the Whit was good, and 21 H. 6. 26. was bouched, where it is holden, that the Witt ought to be special, soil to make mention of the tail: But it was holden by the Court, that the general Witt is good enough. And then the Count ought to be special. Vi. Fitz. 191.

Trin. 30. Eliz. In the Kings Bench.

CCCXV. Ward and Knights Case.

IR an Action upon the case, the Plaintist veclared, That whereas Toll. Lostock parcel of the Bannoz of Ein the County of Susfolk is an ancient Town, and ancient Demesn of the Crown of England, and that, time out of mind, &c. all the men, and Tenants of ancient Demesn ought to be quitted of Toll in all places within the Realm, for them, time out of mind, &c. all the men, and Tenants of ancient Demein ought to be quitted of Toll in all places within the Realm, for them, their Soods and Chattels, &c. And whereas the Ausen by her Letters Patents the tenth of September, the nineteenth of her Rein, tommanded all Mayous, Bapliss, Toutlables, &c. to permit and luster the men and Tenants of ancient Demein, to be quit of Toll, Surage, and other exactions throughout the whole Realm; And whereas the Plaintiss was an Inhabitant, and Tenant in Lostock aforeath, and such a day and year carried his Soods to Yarmouth in the fair County, the Defendant not ignorant thereof, had taken and carried away a Table of the Plaintiss goods, of the value of eight pounds for Coll, to his damage, &c. The Defendant pleaded by Protestation, that Lostock was not ancient Demesh, and by Protestation that the Tenants of ancient Demesh ought not to be quit of Toll, he said. That the Town of Yarmouth is an ancient Borough, and that they had been incorporated by the name of Baylist and Burgesses, &c. and that they have had, time out of mind, &c. an Officer called a Clater-Bayl, and that, time out of mind, &c. they and their Predeription, and if it be not paid, they have used frither to Berchandize with, and if it be not paid, they have used frither to Berchandize with, and if it be not paid, they have used frither to Berchandize with, and if it be not paid, they have used from which he results day brought to the said Town of Yarmouth, two thousand weight of Cable Ropes to sell, so which there was oue so Toll six pence, so Durage six pences, and the Defendant being Clater Bayly bemanded of the Plaintist the said sum which he resuled to pay, so which he took the said Cable, nomine districtions, so the said Cable to be the base used to Cable so, and they have used to distrain by their Clater Bayly, but not that they have used to distrain by their Clater Bayly, but not that they have used to distrain by their Clater Bayly, but not that they have used to distrain by their Clater Bayly, always when a man bemands a thing against common Right, he is

to thew authority express in the whole : And as to the matter in Law. scil. The Prescription to have Coll of the Tenants in ancient Demesh, it cannot have a lawful beginning t As 11 H. 7. 40. The Lord of a Mannoz says, that he hath had a Pound within his Mannoz, time out of mind, &c. And that he hath used to have of every one who breaks his Pound, three pounds, the same is a void custom to bind a stranger, so it cannot have a lawful beginning, and see 3 H. 7.9.6. One prescribed, that if any Cattel be taken in such a place, Damage Feasant, that he might bilicain them and put them in Pound until the Owner had made amends, at the will of him who distrained them, the Came is a void Prescription, for it cannot have a lawful beginning, and time cannot make such a thing to be good. The King may grant Tollage, Pontage, &c. but not to the prejudice of another, as 22 E.3.58. The king cannot grant to one Thorough toil to pals by dighways, for it is an oppression to the people, for every high-way shall be common to every one, see is E.3. Grants 53. and here the Tenants of ancient Desiek are quit of Toll by the common Law, and not by Prescription, which see Fix.

14. and such Tenants have an Inheritance in such Liberties, which the King hy Is grant connot take above, and then it trannot have a lawful king by his grant cannot take away, and then if it cannot have a lawful beginning, it cannot be good by Prescription: also this Prescription is against the Common wealth, therefore it is a void Prescription, and the Common wealth is much respected in Law, and things which in themselves are justifiable by reason, are not justifiable if they be injurious to others, as 2.1 E.4 & 8 E.4.1 8. Fishers may prescribe to dry their Mets upon the Lambs of others, and none can prescribe against such a Prescription; so here, all Lambs which are ancient Demesn, are holden in Society, so as they were all bushandmen, who manured their Lambs for the sustant ation of the kings Subjects, to which they had such such providings to be the better able to follow their bushandry, and therefore to diable such products busients, and to prescribe against these Liberties and Privilenges, is to take away the name of ancient Demess, and to make their Lambs at the common Law, Hobert contrary: Co their the anthority to bemand is not necessary, soons Prescription is not upon demand to distrain: For the common Officer bath authority to demand, for they ought to bemand it, who ought to take the thing demanded, and those are the Baissis and Busquese, and then when their Chater baply doth it, it is as much as if it had been done by the copporation, which see 48 E. King by s grant cannot take away, and then if it cannot have a lawful are the Baillis and Burgelles, and then when their Mater baply both lith is as much as if it had been none by the corporation, which lee 48 E. 3.17. The Happy and comminalty of Lincoln, brought an action of coverant against the Bayorand comminalty of Derby, and declared, that the Bayor and comminalty of Derby had covenanced with the Bayor and comminalty of Lin. that they should be quit of Burge, Pontage, Custom and Toll within the Town of Derby, of all Perthandiles of those of the Town of Lin. and further declared, That 1.W. and H.M. two Burgelles of the Town of Lin. and further declared, That 1.W. and H.M. two Burgelles of the Town of Lin. &c. Erception was taken to this Declaration, because they had alleadged the taking of such Toll, not by the corporation of Derby, but by I. and H. two of the Burgelles of it, in which case the Plainties inight hade an action of Teespaid against the Burgelles, for the and of any of the corporation is not the deaking of the covenant, made by the comminalty but it was not allowed; for if the common Officer of the Town doth any thing so their common all the Common Descending thing was done by the Discertic is reason all the Common be answerable for it, and the whole comminalty by intendment cannot come at one time to and the whole comminated by intendment cannot come at one time to take, scand foin out case, so as much as the corporation out to make the demand, and their common Officer with it is their us, the same is the act of the whole corporation. As to the matter in Law, we have pleaded frecially: Char we took Coll only of those things which are brought by Dea by Herchants, and not otherwise, and I conteive that Cenants in ancient Demesu, are not outparged of Coll, for all

all things, but only for fuch which arise out of their Cenements, or are bought for their Tenements or families there, and their suffers tations, according to the quantity of their Tenements, 9 H.6.25.19 H.6.66. They shall be quit of Toll, of all things sold and bought coming of their Lands, or for the manurance of their Lands: And 7 H.4.

111. Tenants of ancient Demess, ought to be quit of Toll for Dren or Beasts bought and sold for tillage, and manurance of their Lands, and for their lands, and for their suffernance and maintenance of their families, and so to sell them, so. And see accordingly, F.N.B.224.D.Dee Crook 138.139. 28 Eliz. A subgment was given solther sate parties, so the Plaintiss: but there the Plaintiss declared generally, and the Defendant bid demur in Law generally, wherefore by common intendment, the Cattel were bought so, the tillage and manurance of their lands: Forthere it was not shewed (as it is here) that it was to Decchandize: Also we have justified, not only so, Toll, but also so, Trouage our justification is good enough, so, their priviledge shall not be construed to exteen beyond the words of it: As the priviledge shall not be construed to exteen beyond the words of it: As the priviledge of the Law is, Chatis I leave my borse at a Smiths Forge to be shall, there my borse cannot be distanced, but if I or my Dervant take the Baddle from the Dorses back, and say it in the Smiths Forge, the Baddle may be distrained. Then before the the therefore the particular custom shall fand and I conceive that by the Catri, de exoneratione sect. Fiz. N. B. 161. b. The Cenants in ancient Demesh, have not always such priviledges, so, the Califit saith, quod si is sk, then, &c, and nis ish, ecoum anceesfores twentes de coder manerio venire consueverunt temporibus retroactis, and see the same matter in the Register, 181. And afterwards subgment was given matter in the Register, 181. And afterwards subgment was given matter in the Register, and blam, for the Iustices were of opinion, that the Tenants in

M.ch.32, 5 13 Eliz in the Kings Bench.

CCCXVI. Lancaster and Lucas Case.

Relpais was brought for entring into the Parlonage house of Ring-Lease hall, and vivers Lands appertaining to it: The Defendant being farmor of the Parlonage, pleaded, Not guilty; and the Jury found, that one Tybbin was Parlon of the said Church, and that one Ask and Dorothy dis Edife, Wivell and Drausfield were Patrons of the said Church, sail. Ask and his Edife in the Right of his Edife, Wivell as Cenant by the Curtesie, the Reversion to his Don, and Drausfield also as Cenant by the Curtesie, but without Mue by his Edife, &c. so as the Inderstance of the said Parlonage was in Wivell and Ask: and afterwards the Bishop of Chefer being Ordinary, the Parlon and Patron, 4E. 6. somed in a Lease of the Rectory (which Lease was body as to the Edife Ask) to 8. who assigned it to the Defendant. All the Lessos diped: and surther sound, that Ask and Wivell were Peters of the Partonage, and that the Church being void, the Presentment came to the Bishop by reason of Lapse, and that the Successor of the Bishop has Collated his Edark. Cook argued, And he conceived that the same now Incumbent should avoid the Lease in toto; and the case is but this its

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Attornment.

this: Three Coparceners Patrons of an Advowlon, or Tenants in Common, the Parlon, three Patrons, and the Ordinary joyn in a Leafe (where the one of them is a Feme covert, and so her Act word) If the Successor of the Incumbent being presented by Laple shall about it in all: And he conceived that he thould, for all three have interest in the Parlonage, and all three ought to agree, but the agreement of the one is worth nothing: But it hath been laid, that that is but matter of assent, and that the affent of the one is as frong as the affent of them all; As if many Joynt-tenants hold by certain Services, and the Lozd granteth the Services to a firanger, and one of the Joynt-tenants attometh to the Grant, the same is as sufficient as if they had all attomed, Lic. 128. 566. Otherwise it is of a Rent-charge, for there all the Joynt-tenants of the Lands charged upon the grant of the faid Rent ought to attorn to the Grant; for the Cer-tenant cught to attorn, and one of them is not Cer-tenant: And in cale of a Rent charge, the Avoway is upon the Lands: but Attoanment differs from our cale, for Attoanment is but a bare affent, without any interest in him who attorns, for an Abator may do it; but here is matter of Interest, and in Attornment, Attornment for one acre is effectual for all, 18 E3. Fitz. variance 63. but otherwise it is in case of Confirmation for one acre, the same noth not extend to the rest, for in such case an Interest passeth. So here, the one of them is not Patron, therefore all of them ought to concur, 31 E.3. Grants 61. That fuch act of the Patron thall not bind but according to the Estate of the Patron, which fee Lic. 112, 528. as if Tenant in Tail confirm, the same shall not bind the Pre-Centee of the issue, See Fitz. Grants 104 Ju R. 2. The case was that the Bishop of Covent. and Lichfeild had two Chapters, one of Coventry, the o ther of Lichfeild, and he made a conveyance, but one Chapter only dia confirm it, the same both not bind the Successor, for both are but one Chapter in respect of the Bishop, and see the case adjudged by Statham Title Asize, for if the Bishop is chosen by both Chapters, there a confirmation muft be of them both : The cafe in Dyer 11 Eliz. 282. Thark, Archbishop of Dublin, hath two Deans and Chapters, the one sucrendzeth without the affent of the Bishop, and afterwards the other Dean and Chapter confirmeth a Lease made by the Bishop, the same is good: I confess that: for the Surrender was by Act of Parliament, and so one fole Chapter remained: And in our cafe, the Leafe cannot be good in part, and boid for the relidue, for all are but one Patron, as 22 H, 6. 47. Two Coparcenes are, they make composition to present by Turns, a Writ of Annuity is brought against the Incumbent, he shall have an of both. And fee the Take betwirt Gore and Dawbney in the Erchequer Chamber upon a Arit of Erroz, where two are accountable, an Account made by the one is not good, for both the Accountants thall make buth one account, and therefore the Account of the one cannot be good: And the Lord Anderson put this Take, two Joynt tenants of a Hand; the one of them both grant a Topy, the lame is void, for he is not Dominus pro tempore! And see as to the assent of them all, &c. 3 Eliz. 190. Dyer. But it both been objected, That now the Jucumbent comes in by the Droinary, and not by the Presentment of the Patron, and the Ordinary is bound by the confirmation of his Predecessor, so that the collation of the Bishop by Laple, is in the right and see of the Patron, and as the Presentee of the Peir of the Patron thall avoid, &c. so also of the Droinary: and 20 E. 3. Br. Presentment 12. The Patron shall have a Arit of Darrein presentment upon the present. of the Sishop sor Laple, and 22 H. 6. If a man can recover an Addowson, and after the Bishop collate sor Laple, the same is an Arecution of the Judgment, and will make a possession fraris, as Moyle soft. And it out case this confirmation is void in all, because Nonsurconcurrentes it qui in hac parte concurrere deductant: And it is an entire Account sand cannot be avoided in part, and stand sor the resource, and the Presentee Chamber upon a Writ of Erroz, where two are accountable, an Account

fentee comes in in the right of the Heir, for which he may avoid it, &c. Popham contrary, it is to be here confidered, if the Divinary hath Interest in the Church by this Laple, or only an authority; for if he bath an Interest, then it will follow, that every one of his Successors shall be bound by his Confirmation, and also their Presentees: It hath been objected, that there ought to be a full and entire Patron who makes such a Leale, otherwise it is void: But that is not to, as if the Patron be Tenant for life, his Lease or Construction shall not be void in all, but hall be good during his life, which fee 3. E. 3. Grants 6.1. and 19 Eliz. 356. A Parlon makes a Leafe for forty years, the Bishop being Patron and Ordinary confirms it, the Patron dyeth, the Bishop presents, and afterwards is translated, this Leafe shall frand during the life of the Bishop, and of the new Incumbent who found the Church charged, and then luch Lease may be good for part, and void for part. See for the same, 2 E 3. 8. If the Advowson of a Church be appropriated unto a Prior and his Successors, if afterwards the wife of the Grantor be endowed of it, and present her Eleck, the Church is become disappropriated during the life of the Wise, but afterwards shall stand. See the case cited to the contrary, 29 Elizin the case of the Earl of Bedford 7 Co.8. At the beginning the Patron was not restrained to any time to present At the beginning the Patron was not restrained to any time to present his Clerk, but the six months was appointed at the instance and suit of the Dydinaries by a Canon, consirmed in the councel of Laeran, before which time, the Dydinaries had not any Laples, but after the said Tanon, they had an Interest in the Church, and this appeareth in the Register: And see F.N.B.37.s. that after the Dydinary is entituled to Laples, The Plaintist in a Quare Impedit cannot have a Ne admittas, for now the Dydinary hath an Interest: And the Bishop hath Title to present by Laple, and before Presentment he dyeth, so as his temporalises come to the King, the King shall present, which proves that it is an Interest, and the Tivisians call it, Interest caducum & conditionals: And in our case the consumation of the Coparcener shall bind the other Coparceners, in a Nativo habendo, shall bind them all, and the other Coparceners, in a Nativo habendo, thall bind them all, and the billain thall be free for ever. And it was moved also, if an usurper, of the Clerk toho is in by him thall avoid this clause, and by the words of the Statute of West. 2. Si tempus semestre transferit per impedimentum alicujus, ita quod Episcopus Ecclesiam conferat, & verus Patronus ea vice præsentationem suam amittat, adjudicentur damna ad valorem Ecclesiæ pro duobus annis; Wherefoze what the Patron loseth, the Didinary hath the same, therefoze it is an Juterent, and in fieu of that loss the Statute gives damages to the Patron, &c. And the case was adjoined to be sutther argued at another day, &c.

Pafch. 33. Eliz. Rot. 392. In the Kings Bench.

CCCXVIII. Pet and Baldens Cafe.

In a prohibition the Plaintiff declared, that whereas Michael Pett Prohibition.
was leised of divers Lands, and made his Aill, by which he made i Cro. 274.
the Plaintiff his Son his Executor, and thereby devised unto A. his
Alise one hundred pounds, in consideration and recompence of her
Dower of all his Lands, and dyed, and the said A. took to Husband
the Defendant: And that after betwirt the Plaintiff and Defendant,
colloquium quoddam habebatur, &c. upon which conference and communication,

tion, the Defendant in confideration that the Plaintiff promifed to pay to him the faid one hundred pounds, promifed to make to him a discharge of the faid one hundred pounds, and also of the Dower of his Wife, and hewed further, that notwithfianding that the said Pen was ready, and offered the said one hundred pounds, and Dower also, pet, &c. Apon which there was a Demurrer in Law; It was moved by Tan. that here is not any cause to have a prohibition, for the agreement upon the communication is not any cause, for it doth not appear that it was performed. Coke, A Prohibition lieth, for the Wife cannot, have both, money, and Dower, for that was not the meaning of the Devisor, and therefore it hath been holden, that if a man deviseth a Term for pears to his Wise, in satisfaction and recompence of her Dower, if she recovereth Dower, she hath lost her Term, Also here is modus and conventio which alters the Law, sil. mutual agreement: So if the Parson and one of the Parishioners agree betwirt them that so forty shillings per annum he shall retain his Tithes so these years, &c. as it was in the Tale betwirt Green and Pendleton, &c. it is good.

Mich. 32 & 33. Eliz. In Banco Regis.

CCCXIX. Martingdall and Andrews Cafe.

Action upon the case for Wast. In an action upon the Cale, the Plaintiff veclared, that one Mildmy was feifed of a Poule in Aand that he and all those whose estate, &c. time out of mind,&c. have had a way over certain Lands of the Defendants called C.pro quibusdam averis suis, and shewed, that the laid Mildmay enseossed him of the said Poule, and that the Defendant stop the said way, to his damage,&c. And it was found for the Plaintiff, and it was moved in Arrest of Judgment, that the title to the way is not certainly set soft, i.e. pro quibusdam averiis suis, quod omnes Justiciarii concessent: But Gawdy Justice concessed, that the same was no cause to stay Judgment: For it appeareth to us, that the slaintist hat heave of Action, although that the matter be incertainly alleadged, and of this incertainty the Defendant hath lost the advantage, having surceased his invertainty the Defendant pleaded Not guilty, and it was found for the Plaintist to the damage, &c. And Error was brought, because the Plaintist had not set down in his Declaration, the certainty of the Lands compized in the Charters: But non allocatur, for the Desendant ought to have challenged that before, and also are, for the Desendant ought to have challenged that before, and also are, by which the Plaintist do sovenant the Plaintist doctared of a Covenant, by which the Desendant covenanted with the Plaintist to assure to bim all his Lands and Centements which he had in the Counties of Gloucester and Lincoln, and declared, that at a certain day he required the Desendant to make him assured of all the Lands, &c. And the Carte of Covenant was general, quod tenes conventionem de omnibus terris quas habeat in,&c. And twas objected (as here) that the Carti wanted certainty, as how many Acres, or such assured to all the Lands, but non allocatur, for here the Plaintist is not to recover Land, but only Damages, and the Carti was awarded good. Fenner Justice, the Cases are not like to the Case at Bar, sof in the Case at the certainty is not needful, but for the Cattel spart of the Cates,

Mich. 32, & 33 Eliz. In the Kings Bench. CCCXX. Beale and Taylors Cafe.

Upon Evidence to a Jury, it was holden by Gawdy and Clench Leafes, benants to repair during the Term; if now the Leffoz will not do it, the Leffee himlelf may do it, and pay himself by way of Retainer of so much out of the Rent, which see 12 H.8.1. 14 H. 4. 316. A Lease for Retainer of pears by Indenture, and the Leffor covenants to repair the bouses, Rent. and afterwards the Leffor commissions the Leffee to mend the bouses, with the Rent, who doth staccordingly, and expends the Rent in the charges, to. So 11 R.2. Bar. 242. The Leffor covenants, that the Leffee thall repair the Tenements when they are ruinous, at the charge of the Leffor: In debt for the Rent, the Leffee pleaded that matter, and that according to the Tovenant he had repaired the Tenements being then ruinous with the Rent, and demanded Judgment; if action, Jones 242. And gwod. Fenner Justice contrary, so each shall have action against Yelv. 43: the other, if there be not an express Tovenant to do it. Quære, If the Leffor covenant to discharge the Land leased, and the Leffee, of all Rent Charges issuing out of it. If a Rent charge be due, if the Leffee may pay it out of his own Rent to the Lessor, ad quod non fuit responsim.

Mich. 32, & 33 Eliz. In the Kings Bench.

CCCXXI. Offley and Saltingston, and Paynes Cafe:

Office and Saltinghon, late Sheriffs of London, hought an Action up. Ecape. On the Cale against Payne, because that he being in Execution at the Custop for fifty three pounds, in which he was condenned at the Suit of one Spicer, made an escape, the debt not satisfied, by reason whereof they were compelled to pay the money; The Defendant confessed lithe matter, but surther pleaded, that after the Escape Spicer had acknowledged latisfaction (being after the Escape) upon Record of the sum recovered, upon which there was a Demurrer: own Serieant argued, that the acknowledging of satisfaction, being after the Escape, was not any Plea, so, when the Plaintiss Sheriffs have pass the money recovered, there was no reason that Spicers acknowledging satisfaction should stop the Sheriffs of their Remedy against Payne. At was holden by the Justices, that the Plaintiss in this Action ought to shew, that they had been impleaded by him who recovered, so, they cannot have this action before they are sued. For perhaps the Plaintiss who recovered must be contented to hold themselves to the Desendant, and to be satisfied by him. It was satisfied by Glavil Serjeant, that by the Grape the Debt was cast spon the The tiss, and the Desendant discharged; and the satisfied by him who was in Execution, and in his custopy, to go and see a Play, and the same was adjudged an Escape, and the party could not be in Execution again: And then he satisfied hat the Plaintiss. At another day the Case was moved again. And then it was theclear opinion of the whole Couet, that the Action was maintainable, although that the Plaintiss in the sick Action had acknowledged satisfaction: And the heen adjudged here in this Court, in the Case betwirt Hill and Hill, that nortwithsapoing such satisfaction, that the Action lieth. See F. N. B. 130. 5. For the payment after doth not take away the Action, but initigate the damages only.

Mich. 32, & 33 Eliz. In the Kings Bench.

CCCXVII. Greenliff and Bakers Cafe.

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Affumpfir.
1 Cro.193.

The Plaintiff veclated, that whereas he was bound to the Defendant in an obligation of fazty pounds for the payment of twenty pounds, the Defendant the keavest of the Defendant had paid then the Plaintiff at the Request of the Defendant had paid the faid twenty pounds without suit at Law, promised to beliver to the Plaintiff before such a day an Obligation, by which one A was bounden to the Defendant in forty pounds, with a Letter of Attorney to demand the same of the said A and to sue so, it in the name of the Defendant, which he had not done, and in that matter the Plaintiff dad Judgment, and thereupon the Defendant brought a Art of Except fiss, here is not any consideration; for the payment of the mony is no more than he ought to do, and which he was compeliable to do, et. Secondly, the same is no benefit to the Plaintiff, but only a matter of charge to sue the said Bond against A. Thirdly, upon the Venire facias, the Sperist returned but twenty three Jurogs. As to the signet any consideration, so the Defendant hath not any benefit by it, and the Plaintiff doth no more than he ought to do, and the payment was in respect of the Debt, and not of the Defendants Request. And by Gawdy, upon this promise an action both not lye, so the allastist is not to have any benefit by it, but travel. Fencer contrary, and that the Arton sieth so that; as to the third Erroz, the same is helped by the Statute of 32 H.8. and the Statute of 18 Eliz. of imperfect and insufficient return of any Sperist: Fencer, Not only the return is naught, but also the Pannel is insufficient. And it was nowed by Tanfield, that it was adjudged in this Court, Pasch. 25 Eliz between the Tanfield, that it was adjudged in this Court, Pasch. 25 Eliz between Cook and Huer, that where A was bounden to B. in sort was moved by Tanfield, that if A would pay the mony without suit he would beliver him the said Band, by which he is bound to the laid B and it was holden a good consideration, Quod suit concessum per rotam Curiam, but that is not like to the case

Mich. 32, & 33 Eliz. In the Kings Bench.

CCCXII. Guildfords Cafe.

Indictment upon the Statute of 23 Eliz. Tuilford was Inducted upon the Statute of 23 Eliz cap. 1. fuz with I dealwing divers persons, her Dajesties Subjects, from the Resignon established in England to the Roman Religion, and to promise obscience to the Church of Rome, and for that he himself was with drawn from the obedience of the Queen. Coke task Exception to the Inductment, because that the Inductment was not found within the year as ter the offence committed. In the said art there is a Proviso, That all offences against the Act, shall and may be enquired of mithin the year and day after the offence committed. Ropham Attomey General, This case is not within that Proviso, but both depend upon other Statutes before, viz. 1, 5, & 13 Eliz. touching the acknowledging of her Dajesties suppeam Sovernment in causes Ecclesiastical, or other matters touching the service of Tod, or coming to Church, or establishing of true Religion within this Realm, shall and may be enquired as well before the Instices of the Peace, as other Justices named in the said Statutes

tute, within one year and a day after fuch offence committed : And he faid, these words in the Proviso refer only to such offences contained in the said Act, which toucheth the Supremacy and causes Ecclesiastical, the law act, which touchern the Suppermacy and causes Ecclevatical, ec. and luch offences ought to be enquired within the year and day: But this Indiament here both confist upon other matter, for withdiaming himself from the obsolence of the Ausen, which is an offence out of the compals of the last Proviso, and therefore the enquiry of it not testrained unto any time; and the Statute of 13 Eliz. extends to Bills, Writings, Instruments, ec. and not to the words (with-drawing by words) which is supplied by 13 Eliz. (with-drawing by owns) which is supplied by 13 Eliz. (with-drawing by owns) which is supplied by 13 Eliz. (with-drawing by other means) and the restraint of the Enquiry at the time, goes to the hearing of Apals, and not (repairing to the Church;) but as to withand faying of Wafs, and not (repairing to the Church;) but as to withdrawing, the same is at large, not restrained by that Statute: And he said, that this Indiament ooth consist upon many offences, some to offences within the Proviso, and as to those the Indiament is void: Some to other offences, as Creaton, the offence of with drawing, the Enquiry of which is not restrained, and therefore this Indiament thats Enquiry of which is not reuralned, and theretoze this Indiament that fland: Also it was the intent of this Statute, not to restrain this court, but only the Justices of Peace, so they are specially named. Coke conceived, that this word Touching, &c. did not extend to any thing contained in the Statute of 23 Eliz, but only to offences within the Acts of 1, 5, & 13 Eliz. which were incertain before; also this Provide is in the Distunctive, against this or against the Acts of 1, 5, or 13 Eliz, so as that which follows is to be applied to the last of 1, 5, or 13 Eliz, and not to the whole sentence; and always when a thing is named certain, and after general things, the month subsequent hall be named certain, and after general things, the words subsequent hall be referred to the general words, and not to that which is certain. Also if (Touching,&c.) both refer to this Statute, the lentence would have begun with it; but here it begins with the Supremacy, of which nothing is spoken in this Statute, and therefore it ought to be referted to the Statute which begins it, and that is r-Eliz. and then it shall be prepotterous to come after 23 Eliz. and these words (shall and may) suggests be so construed, (shall) is restrictive of itself, and (may) shall be referred to that which was restrained before, as the proceedings upon the Statute of 1 Eliz. cap. 2. were restrained to the next Sheristing and he conceived, that this court is as well restrained to Cinie riffs; And he concribed, that this Court is as well retirained to Lime as any other Court, for the words are as well before Justices of the Peace, as before other Justices named in the laid Statutes, and in the Statute of 5 Eliz. this Court is especially named: Wray, This Provide hegins with Justices of the Peace, therefore it both not extend to offences which are Creason; and the meaning of this Statute of 23 Eliz, was to enlarge the Statutes of 1, & 5 Eliz, for where the offence against the Statutes before was to be enquired at the next Session, and the other within six Anonths; now by this Statute it may be enquired at any time within the year and day, but it both not extend to restrain the vocceedings against offences of Creason, for ertend to restrain the proceedings against offences of Creason, for the words of the Statute are, Chat such offences shall be inquired before Justices of Peace within a year, ac. But in the nert clause, the Justices of Peace may punish all offences against this sac, but Creason by which is appearant that we offences against this fac, but Creason by which is appearant that we offences against the sac, but Creason by which is appearant that we offences against the sac. lon, by which it appeareth that no offences are restrained to time, but those which the Justices of the Peace have authority to hear and determine, and that is not Creason: Gawdy to the same purpose: For all the Provide is but one sentence, and there the whole shall be referred to fpicitual offences, as the not coming to Church, ec. the Lan ida lo anos. Trait.

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Mich. 32. & 33 Eliz. In the Exchequer, Error.

CCCXXIII. Filcocks and Holts Case.

Affumpfit.

ID an Action by Filcocks against Hole, Administrator of A. the Plass. Is an Action by Filoscks against Hole, Administrator of A. the Plata-tiss declared, how that the Dusband of the Defendant, who died intestate, was indebted to the Plaintiss in ten pounds by Bill, and that the Defendant in consideration, that the Plaintiss would permit the Defendant to take Letters of Administration, and give to her further day for the payment of the said ten pounds, promised to pay the said ten pounds to the Plaintiss, at the day: And upon a Acrit of Error brought in the Exchequer, upon a Judgment in the Kings Bench, in that case, It was assigned to Error, that here is not any consideration, for by the Law she is to have Administration, being wife of the Intestate; and as to the giving of surther day for the wife of the Intestate; and as to the giving of surther day for the payment of the ten pounds, the same will not make it good, for it both not appear that she was Idministratric at the time of the promise made, and then sie not chargeable, and then, are the south of the Court. And it was said by Periam Justice, and Manthe opinion of the Court. And it was said by Periam Justice, and Manthe opinion of the Court. And it was said by Periam Justice, and Manthe opinion of the Court. wood chief Baron: That the Bishop might grant Letters of Administration to whom he pleased, if he would forfeit the penalty limited by the Statute: Also it was said, where an Executor of Administrator is charged upon his own promise, Judgment shall be given de kons propriis, for his promile is his own act.

Larch.67,68.

Mich. 33 Eliz. In the Kings Bench.

CCCXXIV. Adams and Bafealds Case.

Action upon the Cafe.

M Action upon the Cafe was brought, and the Plaintiff Declared, That where such an one, his dervant, departed his service without cause of sicense, the Defendant knowing him to be his dervant, did retain him in his dervice, and so kept him. Tanseild, The Action both not spe, for if my dervant depart out of my service, and another both retain him, an Action both not spe at the Common Law, if he do not procure him to leave my service, and afterwards retain him, or simmediately taketh him out of my service. And this Action is not grounded upon any detaute. See 11 H. 4. 176. 47 E. 3. 14. 9 E. 4. 32. Gawdy, The Action lieth, sor here is damage and wrong wone to the Walkintiff. Fenner contrary, for the mong is in the henarture, and hot Plaintiff. Fenner contrary, for the wrong is in the departure, and not in the Retainer; and upon the Statutes it is a god Plea to fap for the Defendant, that the party was vagrant at the time of the Retainer, and the (sciens) both not alter the matter.

Mich. 32 & 33 Eliz. In the Kings Bench.

COCXXV. Nash and Mollins Cafe.

Prohibition. 1 Cro. 206. Tithes.

Ash and wher sued a Probletion against Mollins, for that the Defendant had libelled against them in the Spiritual Court, for Cityes of Mod, growing in Barking Park in Essex; the other did surmise, that the Lands were parcel of the possessions of the Prior and Covent of Cree Church, and that the said Prior, and his Successors, time out of mind, etc. had held the said Lands discharged of Cityes, and held the said Lands discharged of Cityes, who held them so at the time of the Dissolution, are and the other and held them to at the time of the Distolution, ec. and the other part traversed it, whereupon they were at Mue, if the Prior, ec.

beld the Land discharged, tempore Diffolutionis, &c. And now on the part of the Plaintiff. in the Probletion certain old persons were produced, who remembed the time of the Monasteries, and that they did ced, who remembeed the time of the Monasteries, and that they bit not pay any Cithes then, of from thence; Exception was taken to the suggestion by Coke, that here is nothing esse than a Prescription, de non Decimando, for here is not set south any discharge, as composition, unity of possession, publishers of order, as Templaris, Hospitiaris, &c. senner Justice: Spiritual persons may prescribe in non Decimando, for le is not any prescribe to the Church: Wray, Although it is not set bown the special manner of discharge, pet it is well enough, so me ought to take it that it was by a lawful means, as composition, at. or otherwise: For the Statute is, that the king shall hold discharged as the About, at. and we ought to take it, that it was a lawful discharge of Cithes rempore dissolutions: And afterwards the Aury sound for the Cithes remove disolutions: And afterwards the Aury found for the Plaintiffs in the Prohibition: But no Evidence was given to prove, that the Defendant of profecute in the Spiritual Court, contrary tathe Prohibition.

Mich. 32, 33 Eliz. In the Kings Bench.

### OCCXXVI Sheldons Cafe.

Sholden, Taloer, and two other, four persons in all, were Indicated Indicated upon the Statute of 23 Eis. of Reculancy; the moras of the Information of 23 Eis. of Reculancy; the moras of the Information of 23 Eis. of Reculancy; the moras of the Information of 23 Eis. of Reculancy; the moras of the Information of 23 Eis. of Reculancy; the moras of the Information is not good, for were more all them, and not where they are many, as bere, and to is an intentible way, and fo upon the matter there is no offence laid to their charge. And the Indicates bounting of it, pemanded the opinions of Grammarians, who delibered their opinions, that this word (werque) both aptip agnificance of them, and in such lightly cation it is used by all lactrices; Gawdy, Iconceive, that the opinions exposition of of the Grammarians is not to be asked in this cale; But I agree, that when an unusual word in our Law comes in question, for the true confirmation of it, then the opinion of Grammarians is necessary: But successory is no unusual post in our Law, but bath had a reasonable Ex-(merque) is no unulual word in our Law, but bath had a realonable Expolition heretofore, which we ought to adhere unto, which see 28 H. 8.

19. Three bound in an Obligation: Obligamus nos & utrumque nostrum, 19. Chies bound in an Obligation: Obligamus nos & utrumque nostrum, and by the whole Court (uterque) doth amount to quiliber: And see 16 Eliz Dyer 37,338. These Joyntenants in Fee, and by Indenture Tripartite each of them covenanteth and granteth to the others, & corum utrique, to make assurance, and there it was holden that the word (uterque) doth amount to quiliber. Wray, Admit it shall be so taken in a Bond, pet it shall not be so taken in an Indiament: As if a man make a Lease sor years, rending Rent payable at the day of St. Maria, although there be two days of St. Maria in the year, pet the reservation is good, and the Rent shall be taken payable at the most usual day of St. Maria there in the Country: But in an Indiament, if an offence he laid to be done on St. Marias day, without serving which in certain, it is not more. Fenner, The word uterque is ewing which in certain, it is not good. Fenner, The word uterque is latter of displicage, and therefore thall not that the Indiament.

Mich. 32 & 33 Eliz. In the Kings Bench.

CCCXXVII. Blunt and Whiteacres Cafe.

France

\$86.

Writ of Erroz was brought upon a Judgment given in the Common Pleas in a Replevin, where the Defendant divavow as permoz of the Manoz of F. in the County of Berks, to St. Johns Cole leage in Oxford, and laid a Prescription there in him and his fermozs to diffrain for all Amercements in the Court of the fair Manoz, and thewed that the Plaintiff in the Aeplevin was presented by the bo-

shewed that the Plaintist in the Replevin was presented by the Pomage for not repairing of a Poule, being a customary Cenant of the said Banor, according to a pain imposed upon him at a former Court, for which he was amerced by the Steward to ten hillings, and was also presented for not ringing of his Swine, for which he was amerced three shillings four pence, and for these Amercements he distrained: And upon Nihil dicit Judgment was given for the Avowant to have return, upon which a Afric of Error was brought: And Error assigned, in that there is not any Prescription laid in the Avowapt for the Lord to amerce the Tenants, and of common Kight he cannot ho it. See 48 E.2. And such Amercement is Artoxion, for the Lord

for the Lord to amerce the Tenants, and of common Aight he cannot bo it. See 48 E.3. And luch Amercement is Extortion, for the Lord cannot be his own Judge, and therefore he ought to enable himself to distrain by Prescription; Another Erroz, because the Fine is last to be assessively by the Steward, whereas by the Law it ought to be by the Suitors, for they are Judges, and not the Steward: Another, because that in the Adomy it is set down, and presentatum suit, that he had not repaired a certain House; but he both not say, in sacto & categorice, &c. that he had not repaired, for that is matter traversable. 4 Here is no offence, so a Copy-holder is not bound to repair by the Common Law, if it be not by Prescription, for he cannot have Pouse-bot upon the Land as a Termor may, if it be not alledged a custom. Fenner, The Steward may assess fines for a contempt; but not Amercements if not by Prescription. Gawdy, The Lord of a Hannor cannot assess smercements for a Trespals done to himself upon his own Lands; but otherwise it is of a common Trespals, or a Trespals done in the 1 Cro. 748.

but otherwise it is of a common Trespals, or a Trespals done in the Land of another; but for the Diffres he ought to prescribe, and the Judgment was reverled.

Pasch. 29 Eliz. Rot. 121. In the Kings Bench.

CCCXXVIII. Page and Fawcets Case.

Error. 3 Cro. 227.

Rroz was brought upon a Judgment given in Lya, where by the Record it appeareth, that they prescribe to hold Plea every Cleveneson, and it appeared upon the law Aecord that the Court was holden, 16 Feb. 26 Eliz. which was die Dominicus, and that was not assigned for Error inthe Record; but after in Nullo eft erratum pleaded, it was affigned at the Bar: And Almanacks were shewed to the Court in proof of it, and it was holden clearly to be Erroy; but the boubt was, if it should be tried by Jury, or by the Almanacks, and it was faid, that the Justices might judicially take notice of Almanacks, and be informed by them, and that was the Case of one Robert in the time of the Low Catline, and by Coke; so was the Case betweet Galery and Bunbury, and afterwards the Judgment was reverted.

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# Trin. 33 Eliz. In the Kings Bench.

# CCCXXIX. Geofries and Coites Cafe.

I was found by special Aerdia, that one Avice Trivilian was Tenant 1 Cro.25% for life, the Remainder to her Son in tail, the Remainder over; wenant for life, and he in the Remainder in tail make a Lease for life, the Remainder for life rendring Kent; Tenant for life vieth, he in the Remainder dieth, and his Son accepteth of the Kent of the Tenant for life in possession, who vieth. The Issue in tail entreth, he in the Remainder for life entreth, at. And it was contested, that this acceptance of the Kent of the Lesses for life dory affirm also the Kenainder. See Lin. Sect. 321. and such was the opinion of Gawdy and Fenner Justices. Fenner Juftices.

> Pasch. 33 Eliz. In the Kings Bench. CCCXXX. The Lord Mordant and Vaux Cafe.

The Lord Mordant brought an Action of Crespals against George 1 Inst. 225.

Vaux, and declared of a Crespals done in quodam loco, called N. 1 Cro.269.

paccel of the Aganoz of Hawarden. The Case was, William Lord Vaux was seised thereof, and thereof levied a Fine to the use of the Lord Vaux, which now is, for life, and after his decease to the use of Ann and Muriel Daughters of the Lord Vaux and their Alkans, until Ambrose vaux should return from the parts beyond the Seas, and should come to the Age of 21 years, or does the century of Ambrose from beyond the Seas, and the age of 21 years, or neath, which sever of the late bays or times should first happen, the return of Ambrose trom beyond the Deas, and the age of 21 years, of death, whichsever of the laid bays of times should first happen, to the use of the laid Ambrose and the Deirsof his body begotten, with offices Remainders over. Ambrose returned, and 31 Eliz. before he came of full age (for it is not pleaded that he was of full age) levied plow. Com. a fine to the use of George Vaux, the Defendant in tail, with divers and 18.76.2. Remainders over. Afterwards the Lord Vaux being Tenant for life, enfossed the Lord Mordant in Fee, upon whom the said George Vaux ented for a softeiture, upon which Entry the Lord Mordant brought the anion. Buck argued so the Plaintist. Amb. Vaux had nothing in the Lands in question until his return from beyond the Beas, and his sull Lands in question until his return from beyond the Beas, and his full age, and the estate both not begin until both be past; and he said, that no use of artise to Ambrose until the time incurred, for the time of the beginning is uncertain and upon a Contingent, as 13 Bliz. Dyer 301. A makes a Feofiment in fee to the use of himself for life, and after to theuse of B. who he intendeth to marry, until the Istue which he shall beget on her shall be of the age of 21 years, and after the Issue shall come of such age, then unto the use of the said B. during her Wildow hod, the Dusband vieth without Issue, the wife entrethand her Entry holden lawful. But Erroz was brought upon it; And also Calthrops tale was cited to the same purpole, 16 Eliz. Dyer 336. This estate limited to Ambrose both refer to the estate limited to Muriel ash Ann, and not to the time, for ever the first estate is to be respected, as 23 Eliz. Dyer 371. De in the Remainder in fee upon an effate for life devileth it to his calle, victoing and paying during her natural life yearly 20 hillings, and vieth, living Tenant for life, the Rent thall not begin until the Remainder falleth: So as the general words refer to the beginning of the efface, although the words imply that the Sent shall be paid prefently: And see also such construction, 9 Eliz. 261. A Lease was made for thirty pears, and four pears after the Lesson makes another Lease by these words, Nos dictis 30 annis finitis, dediffe & concessiffe, &c. Habend & re-

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nend. a die confectionis præsentium, termino prædict. finito, usque terminum, &c. And although, prima facie, the beginning of this Term feems incertain, yet the Justices did respect the former estate, and so the Lessee hath the Interest of the Term from the making of the Deed, but no estate until the first Term expire: Then Ambrose before his age of 21 years levying a fine, the fine shall not hind the feostes, for it enurse only by way of conclusion, and so hinds parties and privies, but not a stranger of the the particles and privies, but not a ftranger : And the party needs not to plead against this fine, quod partes. to the fine Nihil habuerunt, for that appeareth upon their own thewing. Wist contrary; The state of ambr. accrues and rises when any of the said times come, first full age, return, death, for the words are, And after the return of Ambrose from beyond the Seas, and the age of 21 years, or death, &c. This word (or) before (death) disjound all, and makes the sentence in the Dis junctive, and he cited a cale lately judged in the Common Pleas: A functive, and he cited a cale lately judged in the Common Pleas: A Lease was made to Trewpeny and his Wife for one hundred years, if he and his Wife, or any Child or Children betwirt them begotten thould so long live; the Wife died without Islue, the Dusband held the Land, ac. for the Diffunctive before (Child) made the sentence Diffunctive. Gawdy Justice, That had been Law if no such word had been in the Case. And Wiat said, That although the return be incertain, yet it is certain enough that he shall come to the age of 21 years, or doye. And also this is by way of use, which needs not to depend upon any estate, and if the Remainder shall vest presently upon his return, then it would be doubtful what semainder it is, if it be a Remainder depending upon the estate so the life of Ann and Muricl, 22 so years, is depending upon the estate for the life of Ann and Muriel, or for years, ic. until Ambrole shall come of the age of 21 years: But be it incertain, yet the fine is good, for here is a Remainder in Ambrole, and both are but particular estates, and there is not any doubt, but that one may convey by fine, or bar by fine such contingent uses, for which see the Statute of 32 H.S. All fines to be levied of any Lands intailed in any wise to him that sevieth the fine, or to any his Ancestors in possession, reversion, c. which word (use) goes to contingent uses, for at the time of the making of that Statute, there was no other use. Fenner Justice remembred the Case adjudged M. 30 & 31 Eliz. betwirt Johnson and Bellamy, which ruled this Case. Gawdy Justice, Here is a certainty upon which the Remainder doth depend, i.e. the death of Ambrose; but the Cafe had been the more boubtful if no certainty at all had been in the Cale. Atkinson contrary; Here the Lord Vaux is Cenant for life, the Remainder to George in tail; now when the Lord Vaux levies a Fine, this is a forfeiture, and then the Entry of George is lawful. It bath been objected on the other lide, that this Remainder was future and contingent, and not beffed, therefore nothing paffed to George by Ambrose. The words are (quousque Ambrose shall return.) This word (quousque) is a word of Limitation, and not of Condition, and then the remainder may well rife when the Limitation hapneth. It hath been faid, that this Remainder is contingent, and then the Remainder which is to vest upon a contingency, cannot be granted of softeited befoze that the contingent hapneth: And he cited the Case of 14 Eliz. 314 Dyer. A fine is levied to A to the use of B. foz life, the Remainder to E. in Cail, the Aemainder to B. in fee. Provide, That if B. shall have Islue of his Body, that then after such Issue, and sook paid to, ec. within fix months after the birth of fuch iffue, the use of the faid Lands, after the death of the faid B. and the faid fir months expired, shall be to the said B. and the heirs of his body: And it was holden, that before the said contingent hapneth, B had not any estate tail, for there it was incertain if the said contingent would happen; but in our cafe, the contingents of fome of them will happen, of run out by efflurion of time, and that makes the Remainder certain in Ambrole. And be also argued, that the Limitations are several, by reason of the Dif unative,

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2 Len. 36.

junctive, and the last part of the sentence, and that the said sentence is in the Disjunctive appeareth by the subsequent words (which of the laid days of times shall first happen) And then the return of Ambrose (for that first happed) vests the Remainder in him, and therefore the Plaintiffought to be barred. Buckley contrary: The effate of the Daugh-ters both depend upon a Copulative, ie the return of Ambrole and his full ane, and both is but one Limitations it is clear, that the first Limitation is upon a contingent, and the remainder cannot best until both are performed. And as to that which hath been faid, that there is a certain Limitation, i.e. the return of Ambrok, 18 Eliz. the Case was, Lands were given to Husband and Wife, the Remainder to such of them as should survive the other, so years, the Husband makes a Lease so years and dieth, it was holden, that although the Limitation was upon a certain estate, yet because it is not known in which of the parties the estate secondly limited shall begin, the Lease is void; So here it is not certainly appointed when the estate limited to Ambrose shall begin, upon the return, sull age, or death of Ambrose, and he said, that here are but two times of Limitation, sirst return and sull age, second death; return and sull age determines the estate of the Daughters, and also the death, if it shall sirst happen, and it these times shall be construed in the Disjunctive, the same mould object how the estate of the Daughters, which is an estate for pears determinable, upon the death of themselves of Ambroke. The last words of the Limitation do not distinguish or disjoun it, but respect the estate precedent. And by Clench Justice, If the use limited to Ambroke, thall depend only upon the Limitation of his death, the same should be body, for then he should not be in essentially and the flustices of a contrary opinion, and that the use is search, and the Court of the contrary opinion, and that the use is search, and the contrary opinion, and that the use is search at the court of the contrary opinion, and that the use is search at the court of the contrary opinion, and that the use is search at the court of the contrary opinion, and that the use is search at the court of the contrary opinion, and that the use is search at the court of the contrary opinion and that the use is search at the court of the contrary opinion and that the use is searched the contrary opinion and that the use is searched the contrary opinion and that the use is searched the contrary opinion and that the use is searched the contrary opinion and that the use is searched the contrary opinion and that the use is searched the contrary opinion and the contrary opinion and the contrary opinion are the contrary opinion and the contrary opinion are the contrary opinion and the contrary opinion are the contrary opinion are the contrary opinion are the contrary opinion and the contrary opinion are the cont were of a contrary opinion, and that the use is good, 7 H. 4 Gawdy, Although that here be three things, yet but two times; for the words are not (or) at such of the said days or times, as hall first happen, for that would alter the case: But here these words ought to be intended as if they were spoken before in the Limitation of the estate to the Daughters, and cannot divide the former Limitation: and he said, that if he reason, that the Limitation upon the veath, which is certain, it shall best in Ambrose presently, then it after the other Limitation shall fall, then his Remainder which hesses in him upon the tion thall fall, then his Remainder which vefted in him upon the faid certain Limitation should be bevested, and should now accrue to him upon the other Limitation, which should be absurd and inconvenient, &c. It was adjorned.

Trin. 32. Eliz. In the Kings Bench.

CCCXXXI. Thomas and Wards Case.

IN Ejectione firms, by Thomas against Ward, upon a Lease made to him Ejectione firm of the Nanoz of Middleton Cheney by one Chambers, the Defendant pleaded, that long time before the Lessoy of the Plaintst had any thing, the Bishop of Rochester was seised, and leased the same to the Defendant: the Plaintst by Replication said, that the said Lease was upon condition, viz. The Lesse by the Indenture of the said Lease, did covenant that he would not put out, or disturb any of the Tenants inhabiting within the said Hanoz out of their Tenancies, boing their duties according to the custom of the said Namy; and shewell, that the Defendant had but out one Ann Green a Tenant dwelling DE Ejectione firmæ, by Thomas against Ward, upon a Leale made to him Ejectione firme. ed, that the Defendant had put out one Ann Green a Cenant Dwelling there upon a Cenement parcel of the faid Manoz, late in the possession of the laid Ann, and that the Bishop had re-entred for the condition so broken, and made a lease to the Lessor of the Plaintist, upon which Replication, the Defendant hath demurred in Law.

Tanfeild argued for the Defendant, that the Bilhop had no cause to reenter, for there is not any condition in the Cale, but only a Covenant, for it comes in only on the part of the Leffee, and they are words of Covenant only, whereas every condition ought to be the words of the Leffor, and the Bishop bath Austriant remedy by Action of Covenant: Lelidiand the Binds hat unicient remedy by action of Covenant: But if the words had been indifferent and absolute without depending on the Lelidia of Lelies, then it had been otherwise, as 3 E.6. Dyer, 65. Non liedic, to the Lelies, dare, concedere, vel vendere fluous vel terminum, without the Litence of the Lelidiander pain of togetiure, the same is a good condition, but here it is meerly a Covenant, and it cannot be both. Haughton. Although the words found in Covenant, and be the words of the Lelies, yet the Lease being made by Indenture, the same is the Deed of both, and every word in it is spoken by both parties, and although that he may have an Action of Covenant, yet he cannot there hy overthrow the Lease as by Entry, by condition broken, and yet hy by overthew the Leale, as by Entry, by condition by oken, and pet by the words it seems the meaning of the Indenture was, that by the breach of this Covenant, the estateshould be defented, for so are the words, sub preparationally here by way of Action be cannot have the benefit of the whole Covenant, and way of Action be cannot have the benefit of the whole Covenant, and therefore he shall have it by way of conditions. And see the case between he shall have it by way of condition: And lee the cale betwirt Browning and Bellon, Plow. 132. If it happen the Rent to be behind, that then the Lesse Covenants, that although the Rent be not demanded, that the said Lease should be utterly extinct, boto, and of no effect, and 24 Eliz, there was a cale betwirt Hilland Lockham, where by the Indenture of Leafe, the Leffer Covenanted to grind all his Corn at the Will of the Lesioz, and afterward in the end of the said Indenture, the Lesiee covenanted to perform all the Covenants, subspecia forisactur, and by the opinion of the whole Court, the same was a condition: And see 2, 14.6. 31. where in an Obligation where A was bound to B. the condition is written in this manner, Presented dict.B. vult & concedit, Chat If the fait A. both frant to the Arbitrament of fucha one that then, &c. the same is a good condition, although they are the words of the Obligee, and the Deed of the Obligo, and to here is a good condition. And such was the opinion of Wray and Gardy, and Ferner violatic contradictic. Colhectore Tanfeild Info, Admit here it is a condition of the colhectory that the collection is the collection. condition, pet here is not any breach of it lufficiently fet forth, for the breach is affigued because he had put out a woman, mam renentem, & in-habitantem, out of certain Lands parcel of the laid Manoz, late in the possession and occupation of the laid woman, and that night be, that the was but Tenant at Mill, and the Covenant both refer only to Copy-holders: and it may be also, that she bad dissisted one of the Tenants of the Hand, in which case, the putting out of such a Tenant being in by wrong, is no breach of condition. Also it is not averred in sacto, that Ann was Tenant of any part of the Maintog: Also the Replication is, That the said Defendant had outled the Ann, where he had done her duty, socio debium since, before the Duster, and that plication is, Chat the inid Detendant had dunted the laid Ann, where the had done her duty, fecit debitum fuum, before the Duster, and that might be, that she had done her duty once, but not after, and therefore he ought to have laid, that she had done her duty always, before her putting out, and this word (duly) being single, is too general, for it may be understood of curtesie, where the words in the Indenture are (Doing their duty according to the custom of the Manor.) And also it might be, that Ann Green was Tenant and Inhabitant, but was not put out of the Land which was parcel of the Manor and Wray said, that these Exceptions were incurable: And therefore Judgment was given against the Islassific. Diaintiff.

Mich. 31 & 32 Eliz. Rot. 414. In the Kings Bench.

CCCXXXII. Harvy and Thomas Gase.

be Tale was, bush and and Wife leiled of Lands in the Right of Leales. the Wife, the Pushand alone makes a Leafe by word for years: 1 Cro.216.
Afterwards the Dusband and Wife levy a Fine, and after the Wife and bushand both dye, It was holden clearly by the whole Court, that the Conuse should about the Leafe.

Trin. 32. Eliz. Rot. 314 In the Kings Bench.

CCCXXXIII. Sly and Mordants Cafe.

The anaction upon the Cale the Plaintiff declared, that whereas he i Cro. 191. was leifed of certain Lands, the Defendant had stopped a Clater. Len. 103. course, by which his Land was drowned, and found for the Plaintiff. It do. 174. was moved in arrest of Judgment, that it appeareth upon the Plaint Cro. 198, 199. tissown shewing, that the Plaintiff hath the Free-hold, and therefore he ought to have an Asize, but the same was not allowed, and therefore fore the Plaintiff had Judgment.

Trin. 33. Eliz. In the Kings Bench.

CCCXXXIV. Kensam and Redings Case.

The Cale was, That the Queen by her Letters Patents granted Grants of the Site of the Banoz of Brokeley lying in W. and all the Lands, King Pallutes, Aloods, Ander-woods, and Pereditaments, parcel or apper-1 Cro244. taining to the law Site, except so omnibus groffs arboribus, bolis & marrenio; and Hob. 170. hurther in the law Letters Patents there was a Provide, that the Leftee thould have lufficient Poule-boot, and Penger-boot, &c. and if, not intherapping the law execution. lee hould have sufficient Poule-boot, and Pedge-boot, &c. And if, not withstanding the said Exception, the Lesse should have the Anderwoods, was the question: And it was argued, that the Lesse should have subbois, i.e. And the woods, for that is granted by express words, and the exception extends only gross arboribus, for this word (gross) in the exception extends to all that which follows: Gawdy Justice, If it were in the case of a common person, it is clear, that upon such matter the Anderwoods are not excepted, 7 E. 6. Dyer, 79. A Lease is made of a Bannor except Cimber and great Aloods, the Anderwoods shall pals. Fenner Justice, The Proviso, that the Lesses should have House boot, shews the Anders intent, that the Anderwoods should not extend to Anderwoods, it should be vain and signific nothing, which should be hard in the Case of the Anderwoods, which should be bard in the Case of the Ducen.

CCCXXXV. Trin. 33. Eliz. In the Kings Bench.

In an Action upon the Cale the Plaintiss veclored of Crover trover and and of a Bag of mony, and the conversion of it, The Defen-Conversion. Dant pleaded, that the Bag of mony was delivered to him as a 1 Cro.97.101. pain to keep until A. and B. were agreed, which of them should \$75.691, date it, and pleaded surther, that A. and B. were not yet agreed, who of them should have it, sor which cause he kept it, absque hoc, that

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he converted it to his ownuse, won which the Plaintist did demut in Law; It was moved that the Conversion is never traversable. Wray, Generally Conversion is not traversable, but upon such special matter as is here: Di st Alend money to Band Boellverethathing of the value to Ain pawn, now the Conversion is traversable; see the same case, 4 E.6 Br. Action upon the Case, 113. so here. Fenner agreed with Wray.

Mich. 33. Eliz. In the Kings Bench.

CCCXXXVI. The Bishop of Lincoln and Cowpers Case.

Prohibition.

Tithes.
1 Cro. 216.
Poft.331,332.

De Bishop of Lincoln sued a Prohibition against Cowper, who had sincessed against him in the Spiritual Court for Tithes out of the Manus of D. And the Bishop did suggest, that he and all his Predecess had been seised of the said Panor, and that as long as it was in their possessions, had been vischarged of Cithes, and shewed, that in the time of E.6. the said Panor was convered to the Duke of Somerses in Fee, and afterwards was re-granted to the Bishop and his Successes; It was moved, That the Prescription was not good, because de non decimando; And admit that the Prescription be good, the same is interrupted by the seise of the Duke of Somerses; and although that the Passes be reassured to the Bishop of Lincoln, yet the Prescription is not revived; as homage Ancestes if it be once in a Forrain Seisin, although it be reassured, yet it is not revived. But by Wray, Gawdy, and Feoner, The Prescription is good in the Case of a Spiritual person, but not in the case of a common person. And they all were clear of opinion, that the Prescription is not gon by this Interruption, so Tithes are not issuing out of the Lands, neither can Anity of possession extinguish them, neither are they extinguished, by a release of all right of Land, &c. See so, this Case, Co. 12, part of his Reports in the Case of Pide and Napper.

33. Eliz. In the Kings Bench.

CCCXXXVII. Dethick, King of Arms Cafe.

Indicament.
1 Cro.224.
Yelv.34.
Noy 250.
Misnosmer in
an Indicament.

William Dethick, against Garter King of Arms, was indiced upon the Statute of 5 E. Got striking in the Church-pard: forthat thesaid Dethick in Pauls Church-pard in London, struck 1.8. It was moved: If Cathedral Churches be within the meaning of the Statute: The Court was clear of opinion, that they were. And afterwards the Defendant pleaded, that before the Indiament sound, he was created and crowned by the Letters Patents of the Ducen which he shewed, chief and principal king of Arms, and it was granted by the laid Letters Patents, that he should be called Garter, and that that name is not in the Indiament, and demanded Judgment: The Kings Attorney by Replication said, That by the Law of Arms and becalogy, every one who is made king of Arms before he receives his Dignity ought to be sed between two Discers of Arms, by the Arms, before the Carl agardial of England, of his Deputy, and before him are to go four Officers of Arms, whereof the one is to bear his lattent, another a Collat of Cites, the theo a Colonet of Balabouile guilt, southly a Cup of Wine, and his Patent wall be read before the Carl Barball; and afterwards his Colonet thall be between his Dead, and the Collar of Cites about his neck, and afterwards the Cities poured upon his Dead? And that the Defendant had not received these Ceremonies, so which cause he is not king of Arms, not to be called

called upon, to which the Defendant did demur in Law. Broughton at gued for the Defendant, and he tok Exception to the Replication, because it is pleaded there, that secundum legem Heraldorum, Garrer upon his creation ought to receive, etc. of which Law this Court cannot have Conusance, and therefore the Replication ought to be, soil. Secundum legem Anglise: If in Appeal the Defendant wage Battel, although that belongs unto Arms and heraldry, yet it shall be pleaded according to the Law of the Land, and held he to plead in discharge of his Wardhip, he shall plead according to the Law of Arms. Soif an Insant be made a knight, and he be to plead in discharge of his Wardhip, he shall plead according to the Law of the Land, and yet the begree of a knight belongs to the Law of Arms, i.e. 3. Dower against the Earl of Richmond, who was also Duke of Britain, who pleaded to the Warlet, That he was Duke of Britain, and not so named in the Wirit; but the Court did not regard it, for they cannot have knowledge of it, so not here of the Law of Heraldry: Also the Sourt cannot write to the Heralds to certific it, as they may to the Darshal of the King, or to the Bishop: But we have insticiently seemed our matter, soil Chat we have Letters Patents of the Queen, and that we were sworn in the said Office, and so we are king of Heralds by matter of Record, against which is not material. An Earli secreted with the cremontes of putting a Swood broad wife about his Body, and a Cap with a Coronet upon his bead. Pet the Ring may create an Earl without such ecremonies: And may also create an Earl without such ecremonies; And may also create an Earl without, fich ecremonies is peting, the same, spures ought to be put upon his beels, yet without such create an Earl without, the creemones; and upon another, so such the same, spures ought to be put upon his peels, yet without such create an Earl without such created by such Dame. Gained and Degrees to ceremonies. Gawdy was of opinion, Chat this is but a name of Disore, and therefore the Ju

Pafeh. 32 Eliz. Rot. 318. In the Kings Bench.

CCCXXXVIII. Strait and Braggs Cafe.

In an action of Trespass, for breaking his Close in H.the Defendant 2 Lending pleaded, that long before the Trespass, the Dean and Chapter of Pauls were seised of the Manor of C. in the said County of H. in Fee, in the kight of their Church, and so seised King Edward the Fourth by his Letters Patents, Dat. An. 1. of his Reign, granted to them all kines pro licentia Concordandi, of all their Homagers and Tenants, Keighness pro licentia Concordandi, of all their Homagers and Tenants, Keighness pro licentia Concordandi, of all their Homagers and Cenants, Keighness is befored in the Common Pleas, betwirt the Plaintist and one A.of eleven Acres of Lands, whereof the place where is parcel, and the Post-kine was assessed to 15% and afterwards Scambler the Forain Opposer did allow to them the said 15% because the said Land was within their fee: And afterwards, in behalf of the said Dean and Chapter, he demanded of the Plaintist the said sifteen Hillings, who

who refused to pay it, wherefore he in the Kight of the said Dean, ac. and by their commandment two the Distress as Baily, ac. sor the said 15 s. and afterwards wild it, upon which the Plaintist did demut in Law. It was moved, that it is not averred that the Land whereof the Fine was levied was within their fee; but they say that Scambler allowed it to be within their fee, and the same is not a unsicient Averment; which the Court granted. And it was the opinion of the Court, that the Dean and Chapter cannot distrain sorthis matter, but they ought to sue for it in the Erchequer, as it appeareth 9 H. 6. 27. In the Dutchess of Somersets Case. Gawdy, This Grant doth not extend to the Post Fine, sorting from the concordand, is the Queens Silver, and not the Post Fine. Wray, All shall pass by it, sor it is about one and the same matter, and they were of opinion to give Judgment sorthe Posinish.

Trin. 32 Eliz. Rot. 451. In the Kings Bench.

CCCXXXIX. Sherewood and Nonnes Case.

Covenant.

M an Action of Covenant, the Plaintiff Declared, that Charles Grice and Hefter his Wife were feifed of certain Tenements calle Withons, with divers Lands to the same appertaining, and of another parcel of Land called Dole, containing eight Acres, to them and the heirs of the body of the fato Charles on the body of the fato Heller his wife lawfully begotten, and so seised, 15 Eliz. leased the same to the Defendant by Indenture for years, by which Indenture the Lessor covenanted, that the Lessee should have sufficient Pouse-boot, Fencing-wood, and Poopwood upon the Lands during the Term; and that surther the Lessee covenanted for him, his Executors and Assigns, with the Lessor, that it should be lawful for them to enter upon the Lands during the said Term, and to have enters and regress there. faid Term, and to have egrels and regress there, and to cut down and dispose of all the Mood and Timber there growing, leaving sufficient House boot, Fencing wood and Hoop-wood to the Lessee, upon the Lands called the Dole, for his expences at Withons; and further, that he would not take any Wood of Cimber upon the Premises, without the assent of assignment of the Lessoz of his Assigns, otherwise than according to the Indenture and true meaning thereof. And surther declared, That the said Charles and his Wife so selected, before a Fine of part of the Land to R. S. and his heirs, to whom the Defendant at tozned, and that the faid R.S. afterwards veviled the same to 1. his caife, the now Plaintiff for years, the Remainder over to another, and died, and that the Defendant had felled and carried out of the Lands called Withons, twenty loads of Wlood without the affent and affignment of the Lesso or his Assigns, for which the Plaintiss assignee brought the Action. The Defendant pleaded, That after the Lease John Grice and others by assignment of Hester had cut down and carried away fifty loads of Wood in the said Lands called the Dole, and so they had not left lufficient alloods for his expences at Withons according to the Indenture, for which cause he took the said twenty loads of Wood upon Withons for his expences, upon which the Plaintiff oto demut in Law. Godfrey, The Plea is not good; This Plea is no more, but that inflicient Wood was not left upon the Dole for his expences, and although there be not, yet the Defendant cannot cut Wisso essembert, for he hath restrained himself by the Covenant. Also the Covenant of the Lesso; is, That the Lessee shall have sufficient Cood upon the Dole for his expences at Withons, but in his latisfaction he both not alledge, that he had need of Wood for to spend at Withons, nor both aver that he hath spent it there, for otherwise he hath not cause to take, ac. and the meaning was, that the Leffee fould have lufficient Wood when he had need of it. Hobart for the Defendant, De would not weak to the plea in Bar,

Bat; but he conceived that the Declaration was not god, for here no breach of Covenant is affigued, for the Covenant is in the Dissunctive, soil. Chat the Defendant should not take Alood without the affent or affigument of the Lessor or his Assigns: And the Plaintist chargeth the Defendant with cutting of Wood without the affent and affigument of the Lessor, so he would compel us to prove more than we ought, for if he did it with their assent only, or by their assignment only, it is sufficient; but if the Covenant had been in the copulative, both was necessary: And for the nature of Copulatives he cited the Case, where two Churchwardens bring an Action of Trespals, the Defendant pleads, That the Plaintists are not Churchwardens, upon which they are at Issue. The Jury sind, That the one was Churchwarden, and the other not, and sorthat the Plaintists could not have Judgment, sor if the one of them be not Churchwarden, then the Plaintists are not Churchwardens, for the copulatives ought not to be disjoyned: And he cited the case lately ruled in the Common Pleas betwirt Ognel and Underwood concerning Crucifeld Grange, A leased unto B certain Lands sor sorthy years, B leased part of the same to C sort en B. certain Lands for forty years, Bleafed part of the fame to C. for ten pears. A grants a Kent-charge out of the Lands in tenura & occupatione B. It was refolved, That the Lands lealed to C. hould not be charged with that Aent, for although it was in tenura B. yet it was not in his occupation, and both are exquisite because in the copulative; So here, the Lesse may cut Wood with the assent of the Lesso without any assignment. Also here, the substance of the covenant cannot charge the Defendant, for although it be in the Regative, yet it is not absorbed. lute in the Megative, but both refer unto the covenant precedent; for the words are, That the Lesses shall not cut Moods, aliter quam, according to the intent of the Indenture, where the covenant precedent is not, that the Lesses shall not cut Moods but in the Dole, but that the Leffor might cut down any Trees in the Dole leaving sufficient for the Leffee, which covenant in it self doth not restrain the Lessee to cut down any Trees in any part of the Lands demised, nor adridgeth the power which the Law giveth to him by reason of the demise. Then when this last covenant comes, i. c. That the Lessee will not cut, aliver, then according to the meaning of the Indenture without the assent, ec. the same doth not restrain him from the power which the meaning of the Indenture gives, and so no breach of covenant can be assigned in this for him wirtue of the I case the inthis. For by virtue of the Leafe, the Leffee of common Right may take necessary fuel upon any part of the Land leased: Also this first covenant being in the Affirmative both not abyloge any Interest, as 28 H.8.19. The Lessoz covenants, That the Lesse shall have sufficient Dedge-boot by assignment of the Baily. It is holden by Baldwin and Shelley, That the Lessee may take it without assignment, because there are no Megative words, & non alicer. So 8 E.3.10. A Rent of ten pounds was granted to husband and Wife, and if the Pusband overlive his Wife that he shall have three pounds Aent, and if the Wife do overlive the husband, the shall have forty shillings, there it was holden that the Rent of ten pounds continued, not restrained by the severance of any of them. And although peradventure it appeareth here, that the meaning of the parties was, Chat the Lessee should not cut down any Mood but in the Dole, yet forasmuch as such meaning both not stand with the Law, it shall be rejected, as it was holden to be in the case between Benerand French, where a man seised of divers Lands, designed to the stands, designed to the stands of the sta viled parcel of it called Gages, to the erecting of a School, and another parcel unto B. in fee, and all his other Lands unto one French in Fee, The devile of Gages was holden vold, because too general, so no person is named; and it was further holden, that it passed by the genetal device to French, and yet that was not the meaning of the Devico: Also the Plaintiff is not Assignee but of parcel of the Aeversion, for it

€ Co.9€.b. 27. 2.

Owen Rep. 152. the Reversion is granted to him for years, and such Assignee cannot 1 Co.215. have an Action of Covenant, for a Covenant is a thing in Action, and annexed to the Reversion, so that if the Neversion doth not continue in its first course as it was at the time of the creation of the Covenant, but be altered or divided, the Covenant is destroyed, and there. foze it was holden, 32 H.8. betwirt Wifeman and Warringer, where a Leafe for years was made of one hundred Acres of Lands, rendring ten pound Hent, and afterwards the Lefforgranted fifty Acres of it , that the Heart, and atterwards the Lendzgranted litty acres of it, that the Heart, but all the Kent was destroyed. So in our case here, the Heart, but all the Kent was destroyed. So in our case here, the Heart hat but parcel of the estate, a Term sozyears, and so is not an Assignee intended, as the case betwirt Randal and Brown in the Court of Wards: Randal being seised of certain Lands, covenanted with B. that if he payunto him, his beirs and Assigns, sive hundred pounds, that then he and his beirs would stand seised to the use of the said Band his heirs. Randal bevised the Land to his Wise during the minozity of his Son, the Remainder to his Son in Fee, and died, having made his Wise his Executive. Brown at the day and vlace tended the money generally, the cutric. Brown at the day and place tended the money generally, the Wife having but an efface for years in the Land took the money. It was holden, that the same was not a sufficient tender, for the wife is not Assignee, for the hathan Interest but for years, and here the Son is to bear the loss, for by a sawful Tender the Inheritance shall be devested out of him, and therefore the Tender ought to be made to him and not to his Wife. Also as the case is here, he is no Assignee, for although Charles Grice and his Wife hath the Aeversion, to them and the Detes of the body of Charles, and levy a fine without Proclamations, nothing paffeth but his own effate, and then the Conucee hath not any efface, but during the life of Charles, and then when a manis feiled to him and his Peirs during the life of another, he hath not fuch an efface as he can device by the Statute, and then when he device hit to his Wife for years, it is void, ac. It was adjoined.

Poph.Rep. 91. 1 Cro. 804, 205.

Trin. 33 Eliz. In the Kings Bench.

CCCXL. Smith and Hitchcocks Case.

Affumplit. : Cro.201.

In an Action upon the Case the Plaintist declared, that whereas the Desendant was indebted to him, 19 Maii 30 Eliz. The Desendant in consideration that the Plaintist would sozbear to sue him until such a day after, promised at the said day to pay the debt. The Desendant pleaded, how that 29 Maii 29 Eliz, he was indebted unto the Plaintist in the said sum, for assurance of which afterwards he asknowledged a Statute to the Plaintist, upon which he had Execution, and had been afterwards the many had been that he may indebted to the and had levied the money, absque hoc, that he was indebted to the Plaintiff, antea, vel post, the said day, aliquo modo, upon which the Plain-It was argued that the Traverle was not good, for tiff did demur. the confideration in Assumplit is not traversable, because it is but conbeyance, and amounts to the general Islue, as in debt upon the sale of a Porse, it is no Plea for the Defendant to say, that no such Porse was sold to him. Partridge, If the conveyance be the ground of the Suit it is traversable; an Action upon the Case against an Postler, it is a god Pleathat he is not an Posselet, 2 H.4.7. See 26 H.8.Br. Traverse 341. In an Action upon the Case, the Plaintist declared, that whereas the Desendant, habut ex deliberation of the Plaintist certain goods, the said Desendant in consideration of ten hillings, Assumptive eidem querent promist salvo Custodire,&c. Non habut ex deliberatione, is a good Plea. Godfrey, The Defendant both not answer the point of our action, which is the Assumptic, but only by way of Argument, 11 E4. 4. In Crespals upon the Statute of 5 R. 2. by the Matter of a Colledge and his con-

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freets, the Defendant doth justifie by reason of a Lease made by a Predecessor of the Plaintist, and his Confreers, by their Deed under their Common Seal, the Plaintist, Replicando laith, That at the time of the making of the Lease there was no such Colledge, and it was holden no Plea, for it is no answer but by Argument. Gawdy Justice, In all cases where the Defendant may wage his Law, there the conveyance is traversable. Wray, The cause of the Action is the Assumption, therefore the consocration is not traversable, so, it is not the point with which the Plaintiff is charged: And it is common here, that the Declaration in such Action upon the Case, in consideration of others fums of money, without any more certainty is good, which should not Traverse, be good if the consideration were traversable, but the consideration be good it the confideration were travertable, but the confideration is to be given in Evidence; and it is also common, that in an Action upon the Case in Crover and Conversion, the Crover is not traversable, for the Conversion is the point of the Action. Fenner Justice, The debt here is no cause of the Action, but only the Assumption. In debt upon Arbitrament, the Arbitrament is traversable: So in debt for Rent upon a Demise, the Demise is traversable, for the Arbitrament ances 189. and Demile is the cause and ground of the Action. At another day it was moved again, and Gawdy, mutata opinione faid, that confideration Erecutory is traversable; As where one in confideration that he may marry my Daughter, or of service promiseth to pay, the same confideration is traversable, contrary of a Confideration executed. And afterwards Judgment was given for the Plaintiff.

# Trin. 33 Eliz. In the Court of Wards.

### CCCXLI. Estons Case.

Ston was feised of Lands in Fee holden of the King in chief, and 1 Cro.2432 took a Chife feised of other Lands holden in Socage, they have sune, and the Dusband dieth; and afterwards the Calife dieth, Owen Serieant conceived, That the Queen Hould not have the Wardhip of the Land of the Wife, or the primer feisin of it: And if the pushand had survived his Wife being Tenant by the Curtese, the Queen Hould not have Primer seisin of it after his decease. Wray, If the Kather be selsed of Lands holden in Soccase, and the Mother of Lands holded in knights service, and the Pushand over-lives his Wife being Tenant by the Curtese the King shall have all. Anderson denied that, and he conceived. That the animal of Stanford is not have an each vertex. and he conceived, That the opinion of Stamford is not Law; and yet fee 13 H.4.278. Where the Father is feiled of Lands in chief, and the Dother of other; and the Father dieth, and afterwards the Wother dieth, both hall be in ward. And it was said, That if there be Grandsather, Father, and Son, and the Father dieth seised of Lands holden in Socage; and afterwards the Grandsather dieth seised of Lands in University service, the Lands in Socage thall not be in ward. Andrew help transfer the Andrew help transfer the Course the Lands in Socage that the Andrew help transfer of the Anderson held strongly, That the Queen should have Primer seisin of the Lands of the Pother. Wray contrary, Quere.

Trin. 33 Eliz. In the Court of Wards.

#### CCCXLII. Ellis Hartops Case.

Elis Hartop was feifed of divers Lands, whereof part was holden of the King in knights fervice, and deviced two parts thereof to W. Denham and his weits, to the use of T. his brother, and his wife, and afterwards to theuse of the law T.and his beirs males. T. died in the life

of the Deviloz, and afterwards a Son is bozn; first it was agreed that a Devile might be to the use of another; Then, when Cesty que use byeth in the life of the Deviloz, the Devilee shall take it, and when a Son is bozn, it shall go to him: But if the use be void, then the Devisee shall have it to his own use, soz every devile both imply a consideration: Coke was of opinion, That the Son takes by descent, when Cestuy que use, to whom Land is devised, both resule the use, the Devisee cannot take it, soz he shall not have it to his own use, soz if the use be void, the devise is also void: And the use is void, foz Cestuy que use died in the life of the Devisoz, which see Bret and Rygdens case. A man seised of three Acres, durants and sells one of them, without shewing which, and that befoze the Statute of 27 H.8. The Bargainee dyeth befoze Election, no Election descends to the Devise is void, and it is all one with Brett and Rigdens case. And by Anderson, a man deviseth Lands to the use of one, which use by possibility is good, and by possibility not good; If afterwards Cestuy que use cannot take, the Devise shall be to the use of the Devisoz and his beits.

Trin. 33. Eliz. In the Kings Bench.

CCCLXIII. Weston and Garmons Case.

Affize. 1 Cro. 226.

Slize was brought of a Rent of fifty pounds per annum, and the Plaintiff made his plaint to be diffeiled of his free-hold in H. E. and H.W: And thewed, that John Vaughan and Amy his Mife, who before was the wife of one Weston, and Dother of Six Henry Weston, the Plaintiff in the Assize was seised of the said Danoes of H.W. and H.E. lying in Barton and Kinton in Fee. And 18 Eliz. a Fine was levied betwirt Rober Vaughan, and Miles Whitney Complainants, and the said John Vaughan and Amy his Calife, and Francis their Son Deforceants of the said two Ma nois, inter alia per nomen of the Manois of H.E. and H.W. and of fifty Helfunges, three hundred Acces of Lands, two hundred Acces of Headow, cum pertinentiis, in the late Cowns, by which fine the late Deforceants, did acknowledge the right of the faid Manogs and Tenements, tobe the Right of the Complainants, come ceo,&c. with warranty, of the law Dusband and Wife, for which the Complainants did render a Kent of fifty pounds, per annum, with clause of distress, in dictis Manerijs, to the law, John & Amy, & the Deirs of Amy, and also rendged the Tenements afore faid, with the Appurtenances to the faid John and Amy for their lives, the Remainder to the faid Francis their Son in tail, the Remainder to the faid Amy and her heirs; and that John and Amy dyed, by force whereof the faid Rent descendeth to the said Plaintiff, as Son and Deir of the laid Amy, and that the laid Francis entred into the laid Dalk nozs as in his Remainder, and was feifed in tail, and was feifed of the faid Rent by the Pands of the faid Francis, and afterwards thereof old enfeoff the faid Garmons the Defendant, &c. The Tenant pleaded, That the Plaintiff was never feifed to as he could be diffeifed, and if, &c. Nul tor.nul diffeifin, which was found for the Plaintiff who had Judgment and Execution, upon which the Tenant brought a Writ of Erroz: Stephens affigned Erroz, first, the fine is levyed of two Hanozs, interalia, so as no other Lands passed by the fine besides the Nanozs, and the Rent is granted out of the said Lands and Nanozs, and no other Lands which passed by the fine, and then upon the Plaintists own shewing it appears, that all the Tenants of the Islands charged with the Rent in device of the Islands charged with the Rent in device of the Islands charged with the Rent in demand, are not named in the Affize: Detond Erroz: This Rent is granted only out of the Effate tail, for Amy bath Fee in both, as well the Rent as the Land, and then when the Estate

Effate tailis betermined, the Rent is also betermined, and he hath not averred the life of the Cenant in tail, or any of his Isine, wherefore it shall be intended that he is dead without islue, and then the Rent is gone, and then he hath not any cause to have Asise: Bourchier, As to the first conceived and argued that it is not Erroz, for although these words (interalia,&c.) yet it shall not be intended that the Conusor had any other Lands, or that the Rent is issuing out of other Lands than those two Manors which are expressed, and interalia: As to the second, the continuance of the tail needs not to be averred, for the Cenant in tail bath enfeoffed the Cenant of the Land, by which the effact tail is offcontinued, and although the Cenant in tail be dead without iffue, yet the Kent both remain until Recovery of the Land by Formedon in the Remainder. Fenner Justice was of opinion, Chat the Per nomen should Vaugh Rego unto the Mannoys only, and should not extend to the interalia: Foxif 175- a man in pleading saith, that J.S. was seised of twenty acres of Land, and thereof (inter alia) did enfeosf him per nomen of Green-wead, the same shall not have reference to the interalia. but only to the twenty acres. thall not have reference to the interalia, but only to the twenty acres: And the aberment of the continuance of the Cail needs not, for the Estate-tail is discontinued. Gawdy Justice was of opinion, That the per nomen thould go as well to the inter alia, as to the two spanozs, and then all the Cer-tenants are not named in the Affice, and the fame not to be pleaded, for it appears of the Plaintiss own thewing, and there needs no averment of the continuance of the Tail for the cause aforesaid. Clench Justice, The per nomen both refer to all, which see by the Fine, which shews that other Lands passed by the Fine, than the said two Banors. And as to the second point he said, There needed no averment. Gawdy, As to the first Erroz the same cannot be saved by any way, but to say. That the Conusor was not seised of any other Lands than the said two Manors, and then the Fine doth not extend unto it, and then no Rent is granted out of it. Fenner, In the Common Pleas, in the great case of fines, it was holden, that in pleading of a fine, it needs not to say. Chat the Conusoz was seited, for if the Conusoz or Conusee were seised, it is sufficient: for such pleading is contrary in it felf; for a fine, fur conusance de droit come ceo, &c. both suppose a precedent Sist: It was also objected, That here is a consusion in this fine, for the Kent is rendred to the Dusband and Wife, and to the heirs of the Wife, and the Land is rendzed to the Husband and Wife for their lives, the Aemainder to Francis in Cail, the remainder to the Wife and her beirs: And these matters cannot fland together in a Fine, but the one will confound the other : But as to that it was faid, that the Lawshall Harshall these two renders, so as they both shall stand; And it is not like unto a Kent-service, so a Kent-service issued out of the whole Estate: And therefore is a Remainder upon an Estate so, like Escheats, the Seigniogy is gone even during the like of the Tenant so, like which see all a contract of Font charges the Conant so. life:which fee, 3H.6.1 contrary of a Nent-charge: Foz if the Szantce of a Kent in Fee purchaseth the remainder of the Land out of which it is depending out of an Effate foz life, hefhall have the Kent during the life of the Cenant foz life. And of that opinion were all the three Justices, foz the Conusozs took by several Aas, and the Chate is charged, tol it cometh under the Grant. Fenner Justice, There is a difference betwirt akent service and akent-charge, or Common, for that shall charge only the Possession, but a kent-charge shall charge the whole Estate: And therefore if he who hath a Kent-service releaseth to him in the kenainder upon an Estate-tail, or for life, the kent is ertina; which Gawdy denied: And this Case was put, The Dissesse door release to the Lesses for years of his Dissessor, nihil operatur: But if the Dissessor, for first and Diffeifee joyn in a Release to such Lessee, the same is good, for first it hall enure as the Release of the Disselog, and then of the Disselse,

Mich. 32 & 33 Eliz. In the Kings Bench.

CCCXLIV. Tedcastle and Hallywels Case.

Debt.
2 Roll.594.
1 Cro.234,
235.

In Debt upon a Bond, the Defendant pleaded, That the Condition was, That whereas John Hallywel had put immelf to be an Apprentice to the Polaintiff; the Defendant John Hallywel during his Apprentice thip, or any other for him, by his confent or agreement take, or ciocously spend any of the Sods of his said Waster the Polaintiff: If then the Defendant within one month after notice thereof given to him, do pay and satisfie the Plaintiff for all such sums of Wonies, Wares, etc. so taken or ciocously spent by the Defendant, or by any other by his procurement or consent, the same being sufficiently proved; that then, ecc. The Defendant by protestation; Quod neciple, nor any other by his procurement or consent had taken, or ciocously spent the Sods of the Polaintiff: for Polea saith, That the Polaintiff before the Writ brought had not sufficiently proved, that the Polaintiff before the Writ brought had not sufficiently proved, that the Polaintiff before the Writ brought had not sufficiently proved, that the Polaintiff bid demux in Law. It was argued by Daniel, That the proof is sufficient and god sof the time, if it be tried in the Action upon this Obligation: and the proof intended is proof by twelve men, sof it is not set down before what person it shall be proved, nor any manner of proof appointed, and therefore it shall be tried according the Law of the Land: which see so Esq., so here is a sutther matter. First warning, and a monthaster Wolfer grow, at. And if the proof shall be made in this Action, the Defendant shall sole the benefit of the Condition, which gives time to pay it within a monthaster; so in all such cases the precedent act of the Obligee is traversable, as so H. 7. 13. I am bound by Obligation to ensecode the Radice by the meaning of the Obligee shall appoint. In an Action bought against me, I shall say that the Polaintiff bath not appointed, at. And here ought to be Notice sirely, and such the Wolfee Wolfee Ball appoint. In an Action bought against me, I shall say that the Polaintiff bath not ap

18 Eliz. In the Kings Bench.

CCCXLV. Manning and Andrews Cafe.

Devife. 4 Len.2. IN Ejectione firmæ, the Juty found by special Aerdist: That Richard Hart, and Katharine his Wife, and divers other persons, 1 H. 8. were tessed of the Lands in question, to the use of Richard and his heirs, ad per implendultimam volunt. dict. Rich. who the first of August, 8 H. 8. by his Wisting devised, That his Feostees should be from thenceforth seised to the use of his said Wiste for her life, and after to the use of W. H. his Son sor his life, without impeachment of Wask, and after the death of the said Katharine his Wisliam his Son, and Joan Wise of the said William, his Feostees should be seised to the use of the next specific of the Body of the said William and Joan lawfully begotten, sor the term of the life of the same Peir.

and after the deceale of the same beir, to the use of the next beir, of the and after the vectore of the latte period the late of the life, of the life of the heirs of the body of the late William and Joan lawfully begotten, for the term of life of lives of every luch heir; or heirs, and for More Rep. 368. Default of luch heirs to the use of the heirs of the body of the late William, and for default, ac. to the right betrs of William. And further he willed, Chat if any of the laid heirs mail fer, alten, tay to mortgage, the right, title and interest which they of any of them thall have in or sut of the same Lands, or by their consent or affent suffer any necovery to be had against them, ec. or do any other Ac, whereby they or their heirs, or any of them may or ought to be disinherited; that then the use limited to such heir so doing that be voted and of no effect buting his life: And that his faid Feoffees thall be thenceforth instents the use of the heir apparent of such Offender, as though he were dead. Richard Hart died, William had tillte by the said Joan his wife ason named Thomas, and died, and afterwards 31 H.S. Joan died, Katharine bleb, Thomas entred, and had titue Francis and Percival. Thomas by Deeb indented, r August 4 Elia. bargained and fold to Andrews, and levied a fine to him with warranty: And afterwards 6 Eliz. Francis levied a Fine to the faid Andrews, Sur conusans de droit come ceo: And further by the said fine released to him with warranty, at the time of which fine levied Percival was beit apparent to the said Francis, Francis after had ishe L and F. who are now living. The heir of the Survivol of the Feoffees within five years after the age of Percival, and seven years after the fine levied, enter to revive the use limited to Percival, who entred, and leased to the Plaintiff. This case was argued by the Justices of the Kings Bench &c. first, It was agreed by the whole Court, That Richard Harr being leised with leven others, unto the use of himself and his heirs, might well device all the use, although his use was in use suffered of the use for the was sountly seised with seven others to his yer the Land, own use, and so the use for the eighth part suspended, for when this December, i.e. at the time of his death, all the possession of the Land by the Survivoz passeth from the use, and then the use being with pawn from the possession shall well pass. And by Wray, A use surpended may be devised: As if feosses to use befoze the Statute of 27 H.8. be dissifted, by which distribute the use is suspended, and afterwards during the dissession, Cessus queuse, by his Calill deviseth, That his Feoffees thati re-enter, and then make an effate to I.S. in fee, the fame is a good bevile, for by that differin the trust and confidence reposed by Cestuy que use in the feosses, is not suspended: Secondly, It was holden that here aule implied was limited to Joan the wife of William, although there be not any express devise of it, according to the Book of 13 H7.17. Thirdly, when ause is limited to the beit of the body of William and Joan lawfully begotten for life, and afterwards to the beit of the body of the same heir for life, ac. Geofry Justice was of opinion, That here is in effect an estate tail, for the estates limited are directed That here is in effect an efface tail, for the estates limited are directed to go in course of an efface tail; for he wills, That every heir of the body of his Son hall have the Land, and the special words that not make another efface to pass, but that which the Law wills: As if Lands be given to one for life, the Kennainder after his death to the Heirs of his body lawfully begotten, notwithstanding that the words of the similation imply two several effaces, pet because the Law lo wills, it is but one efface. Gawdy Justice said, That every issue begotten betwift William and Joan Hould have an efface for life successive, and a Remainder in tail expectant as right heir of the body of William, and this effact tail shall not be executed in possession by reason of the shall hinder melice Kennainder for life similed to the heir of the body of William che execution and Joan, and although that these melice Kennainders are but upon a of an estate and Joan, and although that these meine Memainders are but upon a of an efface confingent, and not in effe, pet fuch regard shall be had to them, wat in possection.

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Vaughan and Alcocks case.

they shall hinder the execution of the estates for life, and in tail in possession: As if an estate be made to A. for life, the Remainder to the right heirs of B. in tail, the Remainder in fee to A. although the estate tail be in abeyance, and not in effe during the life of B. yet in respect thereof the free-hold and fee thall not be conjoyned. Southcote Juffre, To the same purpose; And he put a case lately adjudged betwirt Vaughan and Alcock : Land was deviced to two men, and if any of them dieth, his heirs thall inherit, these vevilees are Tenants in common, because in by device, but contrary if it were by way of Grant: Lands are devis fed to A and B to be betwirt them divided, they are Tenants in common. Wray, William and Thomas have but for life, for they are purchalors by the name (heir) in the fingular number, but when he goes further, and lays, for want of fuch issue to the heirs of the body of William, in the plural number, now Will. bath an Inberitance : And if a debile be made to one tog life, and then to his heir for life, and to from heir to heir in perpetuum for life, here are two estates for life, and the other Devilees have fee, for estates for life cannot be limited by general words from heir to heir, but by special words they may: And here, Thomas being next heir of the hody of William and Joan, hath an effate for life, and also being beir of the body of the faid William, bath a Remainder in tail to him limited, a the meln remaineth limited to others, i.e. to the next heir of the body of Thomas being in abeyance, because limited by the name heir, his father he co.11. Rep. 80. ing alive, shall not hinder the execution of these estates, but they shall remain in force according to the rules of the common Law: Then. Thomas so being seised levyeth a fine against the Provision of the Will, by which Thomas hath forfeited his estate sortie, and so his next heir shall have the Land during his life: And a great reason wherefore the heirs, at supra, after the two sirst limitations shall have tail, is, because that if every heir flouid have but for life, they flouid never have any Interest in the Lands by these limitations, for by the express words of the devise, none shall take but the heir of the first heir for ever, is. When Thomas altens, by which the use vests in Francis, and when afterwards Francis levieth a fine, then the use vests in Percival Hirt, being nert heir of the said Francis at the time of the fine levyed (notwithstanding that afterwards Francis had a Son which is his next heir) and therefore the tile in Percival by the birth of the late Son in Francis shall not be devested, because it was a thing vested in him before by purchase, 9 H.7.25. A enfection on the part of A-to be performed, and dyeth, having iffue a Daughter, the Daughter performs the condition, and afterwards a Son is vorn, the Daughter thall hold the Lands against the Son: So 5.E.4 6.A woman haty issue a Daughter, and afterwards confents to a Ravisher, the Daughter enters, and afterwards a Son is toon, yet the Daughter shall hold the Lands sozever, i. e. And Geofies Juffice fait, Francis being in by force of the forfeiture, thall not be fubject to the limitation of the Calilyies to any forfeiture if he alien, for the efate which Francis both for his life is but an estate gained by the offence of his father, and the use was limited to him upon the chill of Richard, and then the said estate is not subject to the Provision of the Mill, and then hath not Francis committed any fogfeiture : And admit Francis fhall forfeit, yet Percival shall get nothing thereby, but the estate which Francis

had at the time of the Finelevied, sil. the free hold only, so no estate of Inheritance was inhim living his father. Asto the regress of the feosfees, Geofies was of opinion, That where an use is limited to a perfoncertain, and thereupon vested in the person to whom it is limited,

That the Entry of the Peoffees in luch cale is not requilite, notwith standing that the first estates be discontinued, but where the use (as in our

cale) is not limited to a person certain in effe, but is in abeyance, not bested in any person upon the limitation of it, some estate ought to be left in

the feoffees to maintain that use, and to render it according to the limis

Efface veiled . shall not be develted.

1 Cro.61.

tation, and in our cale, thele ules not in elle at the time of the making of the Statute of 27 H.8 could not be executed by the laid Statute, but now at the appointed time by the limitation thall be raised and revived by the Entry of the Feoffees, but here by the fine and Non-claim, the feoffees are bound, and their Entry taken away, and so no use can accrue to Percival Hart by such Entry. Southcote Justice was of opinion, that the Feoffees cannot enter at all, because that by the Statute of 27 H.8. nothing is left in them at the time of the making of the Statute, which labes the right of every person, another than the Feostees, so as no right is saved to them but all is drawn out of them by the operation of the Statute, and the second saving of the Statute, saves to the Feostees all their former Right, so as the Right which the Feostees had by the Feostment to the use is utterly gone. But Persival Hart may well enter, for he is not bound to the five years after the Fine levied, for he had not right at the time of the Fine levied, but his right came, by the Fine right at the time of the fine levied, but his right came by the fine. Wray chief Justice, The feossess are not to enter, for the Statute of 27 H.8 hath two branches, 1. gives the possession to Cestuy que use in such manner as be hath in the use. 2 takes away all the right out of the feoffees, and gives it to Cestuy que use, so as nothing at all remains in the Feoffees; for if an Ac of Parliament will give to me all the Lands, feosces; for if an Act of Parliament will give to me all the Lands, whereof my brother Southcore is seised, and that I shall be in the Seisin thereof, now is the actual possession in me without my Entry: so where an use is often executed by the Statute, Cestuy que use without any Entry hath an actual possession. As to the uses contingent, nothing remains in the Feosces for the setting of them when they happen, but the whole estate is setted in Cestuy que use, yet subject to such use, and he shall render the same upon contingency: And if any estate should remain in the Feosces, it could be but an estate for life, for the Fee simple is executed in Cestuy que use, with an estate in possession, and then the Feosces should be seised to another use than was given them by the Aivery. Also if a Feossment be made unto the use of the Feosso, and his heirs, until J.S. hath pass unto the Feossor world from thencesorth the Feossor and his pald unto the Feoffoz 1001, from thenceforth the Feoffoz and his heirs thall be leifed to the use of the said I.S. and his heirs, if upon such Feoffment any thing should remain in the Feoffees before the payment by 1.8. the same should be afee-simple, and then there should be two feesimples of one and the same Lands, one in the Feoffoz, and the other in the Feoffees, which should be ablurd, and therefoze the best way to avoid fuch inconveniences is to continue the Statute, that it draws the whole effate of the Land, and also the confidence out of the feoffees, and repoleth it upon the Lands, the which by the operation of the Statute, shall render the use to every person in his time according to the limitation of the parties: And also if any Interest both remain in the Feosces, Then if they convey to any person upon consideration who hath not notice of the use, then the laidule thall never rise, which is utterly against the meaning of the laid Statute, and the meaning of the parties, and therefore, to confirme the Statute, to leave nothing in the Feoffees will prevent all such mischief: And if a Feoffment in fee be made to the use of the Feoffor for fire, and afterwards to the use of his wife which shall be for life, and afterwards to the use of the right peirs of the feoffor, The feoffor enfeoffeth a stranger, taketha wife, now cannot the feoffees enter during the life of the feoffor, and after his death they cannot enter, because they could not enter when the use to the wife was to be In upon the intermarriage, and then if the Entry of the Feoffees in fuch case thouse be requisite, the use similed to the wife by the Act of the Feoffoz thouse be destroyed against his own similation, which is strong against the meaning of the Act asociate, soz by the laid act, the Land is credited with the laid use, which shall never tail in the performance of the Act as the Remainder way he similated the continuous states in Remainder way he similated to the continuous states in Remainder way he similated to the continuous states in Remainder way he similated to the continuous states in Remainder way he similated to the continuous states in Remainder way he similated to the wife by the Act of th mance of it. And fuch contingent effates in Remainder may be limit-MI 2

ed in poffeffion,a Fortiori in ufe, which fee 4 E.6. Colthirfts cale,23. And Ple fingtons cale,6 R.2. And it is true, at the common Law, the Entry of the coffees was requilite, because the wrong was done unto them by reafon of the polletion which they then had; but now by the Statute, all is drawn out of them, and then there is no reason that they medie with the Lands wherein they have now nothing to do, and the kope of the Statute is, utterly to dilable the Feoffees to do any thing in primoice of the ules limited, loas the Feoffees are not to any purpole but as a Pipe to condey the Lands to others; So as they cannot by their Release or confirmation, &c. bind the ules which are to grow and artice by the limitation have unto the Feoffment made unto them, which kee Br. 30. 30 H. 8. Leofiments to ules 50 A. covenants with B. That when A. Mall be enfeoffed by B.of three Acres of Lands in D. that then the faid A and his beirs thall be frifed of Land of the faid A.in S. to the use of B. and his beirs, and afterwards A. enfeoffeth a franger of his Lands in S. And afterwards Benfeoffeth A. of his Lands in D. now the feoffee of A. fhall be feifed to the use of B. notwithstanding that the said feosiee had not notice of the use, so Land is bound with the use in whose hands soever it come: And see the like case, ibid. 1. Ma. 59. Apon the reason of which cases many assurances have been made, to it is the common manner of Aportgage, i.e. If the Hortgagoz pap such a sum, &c. that then the Hortgagee and his beirs shall be seised after such payment, to the use of the Hortgagoz and his beirs; In that case although that the Mortgagee assen, yet upon the payment, the use shall rise well enough out of the possession of the Alienee, and the Lands shall be in the Aportgagoz without any Entry: For the Bortgagee could not enter against his own sie. any Entry: for the Portgages could not enter against his own alienation, to revive the use which is to rife upon the payment, and therefore without any allistance of luch Entry, it shall arise: As at the Common Law, Land is given to A in tail, the Remainder to the right beirs of B. A. levies a Fine, makes a Feofiment, luffers a Necovery, &c. although the same shall bind the Islues, yet if B. dyeth, and afterwards A. dyeth without issue, now notwith standing this Fine, &c. The right Help of B. may enter: And always a uteshall spring out of the Land at his due opportunity, and it is a collateral charge which binds the Lands by the firft Liberty, and cannot be bischarged, vi. 49. Aff. 8. & 49 E. 3. 16. Ifabell Goodcheapes cale: A man devileth, that his Executors that lell his Lands, and afterwards dyeth without heir, to as the Land elcheats to the King, pet the authority given to the Executors thall bind the Landsin whole hands foever it comes, & . And so a title of Entry continues notwith flanding twenty alienations: But an use is a less thing than a Title of Entry, especially an use in contingency, and an use as long as it is in contingency cannot be forfeited: As if the Mortgagor be attainted and pardoned mean betwirt the Mortgage and the day of Aedemption,&c. Then when Thomas levies a fine, Francis may well enter; And Thomas before the fine had an effate tail executed to his free hold, and therefore by the fine he gave an effate of Inheritance to the Conucee, and then no tight of entall remained in Francis, but he took an estate for life only, and that as a Quechaloz by the limitation of the Will, and then when Francis levied a Fine, his eliate was gone (which was but for life) and then the right of the entail, and all the other effaces which are e specially limited are also gone, and so Percival Hart, to whom no estate was specially limited bath not any cause to enter, &c. And it was further faid by Wray: Dusband and Mife Tenants in special tati, the busband levies a fine with Proclamations and dieth, the Wife enters, the islue in tail is barred, but if the Wife enter after the death of her busband, and before the Proclamations pals, the iffue is not bound by the fine: And if Tenant in Tail granteth totum fratum, and after levieth a fine thereof with Proclamations, come ceo, &c. The Islue is barren; contrarp where the fine is upon a Releafe,&c. 18 Eliz.

# 18 Ble. In the Kings Bench.

# CCCXLVI Henningham and Windhams Cafe.

A Retur Henningham hought a Clift of Erect against Francis. Wind Error.

A ham upon a common secousty havagainst flerry his Bearliet, and Own Rep. 63.

The Case was, Chat Land was given in special tall to Thomas Flerring
an Extension of the land Flerry and the land Archae, the Remaindoor in gentle
tent of the common tall by most effect to the land of the land rat tail (the efface tail in polletion was to him and the Delts Apilles of his body ) Thomas had time the face Heary and three Daughters by one woman, and the fact Archer and theoretic bones by another bothers, and woman, and the late Armar and two other Dougles by another wething, and byed leiled. Henry entred, and made a Frontient, a common Acovery is had against the Fronties, in which Henry is veneties, who woulded over the common Acoustics according to the alian course of common Acovers. Henry does without thus, and Armar blought a Cert of Error and Arbertes. Henry does without thus, and Armar blought a Cert of Error and Arbertes, and of which be the whole to whom the Court, That Error and Attaint always bescends to such person to Land is to deswhom the Land thouse descends. If such Recovery, or falls outh had not been: As if Tanks he river to one and the Doese Semales of his body. been; As if Lands be given to one and the Peirs Females of his body, &c. and luffers an errunious Recovery and dyeth, the Peir female shall have the Alzit of Erroz: So upon Recovery of Lands in Borough English, for sich Saxion velcends according to the Land, quod fuir contessium pet waam Curiam: But it was objected on the Defendants part: Chat because that the Feories being Cename to the Pracipe is to recover in value a fre-limple, and so Henry is to pieto a fee-limple which should defcend to the heir at the Common Law if this Accovery had not been , therefore he to whom the same should velcend, should have the Writ of Erroz, soz he hath the loss: But the law Exception was not offower: And it was said, That Cenant in tail upon such a Accovery, hall recover but an estate in tail, sil. Unit estate which he had at the time of the loarranty made, &c. And atterwards Judgment was given that the Action was maintainable: So it a name hath Lands of the part of his mother, and loseth it by erronious Invament and speth; That the petr of the part of the spother thall have the Celest of Ettoz.

18 Eliz. In the Kings Bench.

# OCCXLVII. Foster and Pirfails Case.

In Ejectione firms the Cale was: Brook beviled Lands to his Wife in 1 Cro. 2.

Igeneral Cail, the Asmainder over to altranger in Fee, and dyed, he was another dusband, and had inue a Daughter: The dusband and Wife levyed a fine to a stanger: The Daughter as seet being by 11 H-7, entred: It was agreed by the whole Court. Chatan exate devised to the wife, is within the words, but not within the meaning of the Statute: Secondly, It was relabled, Chat no estate is within the meaning of the Statute, unless it be too the Jopmure of the Wife is the Chiroly Relative. That the meaning of the Statute was, That the wife so present the day of the Dayshand should not presundice the silver or heire wife for retorded, Charles in the Anthony of the Stratte was, Charles wife for retorded by the Ousband hould not prejudice the illues of heirs of ber husband; and here nothing is left in the Islaes of heirs of the Ousband, to as the Office could not prejudice them, to the Remain-off is limited over.

## 18 Eliz. In the Kings Bench.

# CCCLXVIII. Greenes Cafe.

Acceptance of Rent. 1 Cro.3. 3 Co.64.b.

Entry.
Plow.Com.in
Browning and
Bestons Case.

Reene made a Leafe for years rending Kent with clause of KeIentry, and the Kent due at the Feast of the Annunciation was behim
being demanded at the day, which Kent the Lessoz afterwards accepted,
and afterwards entred for the condition broken, and his Entry holden
lawful, for the Kent was due before the condition broken; but if the
Lessoz accepts the next Quarters Kent, then he hath loss the benefit
of Keentry, southereby he admits the Lesse to be his Tenant. And if
the Lessoz mitrain for Kent due at the said Feast of the Annunciation after
the forseiture, he cannot afterwards re-enter sor the said sozseiture, sor
by his Distress he hath assumed the possession of the Lesse: So if
he make an Acquittance sor the Kent as a Kent, contrary, if the Acquittance he but sor a sum of mony, and not express sor the Kent, all
which tota Curia concession.

Coup man the the the

# CCCXLIX. 20 Eliz. In the Common Pleas.

Entry for Forfeiture.

Dyer 339.2.

Livery of Seifin. The Cale was, Lessee so, life, the Remainder so, life, the Aemainder in see: The two Tenants so, life make a frostiment in see. Oyer, A woman Cenant so, life in Jopature, the Remainder for life, the Aemainder in see; the Cenants so, life for in a frostiment, the Entry of him in the Aemainder in see is lawful by 11 H.7. And if Tenant so, life be impleaded, and he in the Aemainder so, life will not pay to be received, he in the last Aemainder may; and so in our case, inalmuch as he in the Aemainder to life was party to the wrong, he in the Remainder in tail shallenter: Which Harper and Munson granted, i.e. Manwood, Although that this feosiment be not a Disselin to him in the Aemainder in tail, yet it is a wrong in a bigh vergree; as by Linkon, A Disselso leaseth for life to A. who altensy begree; as by Linkon, A Disselso; leaseth for life to A. who altensy begree; as by Linkon, A Disselso; leaseth for life to A. who altensy begree; as by Linkon, A Disselso; leaseth for life to A. who altensy begree; and the Disselso shall not enter although the Altenation was to his disinherically shall not enter although the Altenation was to his disinherically shall not enter although the Altenation was to his disherically shall not abail him no moze than in case of Disselso, the lame descent shall not abail him no moze than in case of Disselso, the lame descent shall not abail him no moze than in case of Disselso, and the confirmation of him in the Aemainder for life. Over was of opinion, That by this Livery the Remainder for life, and the confirmation of him in the Aemainder for life, and this Livery shall be as well the Livery of him only who lawfully may make Livery Pebwhere an estate is wrongshilly made it shall be accounted in Law, the Livery of all who royn in it. And in this, the Aemainder so the Cenant in the Aemainder so, life shall be holden a word Livery, especially when he iopns with such a person who hath not authority to make Livery; as if the Lord and a Stranger Dissels so, and pet it is the Livery of the Lesses

Tenant fog life in poffestion alieneth in fee, that be in the Aemainder in fee cannot enter, fog it was not to his bilinherilin.

# CCCL. 20 Eliz. In the Kings Bench.

The Case was, That a Capias ad Satisfaciend was delivered to the Sherisf, and after the Sherisf did arrest the party against whom the scapias issued, by force of a Capias Urlagarum, and then the party in the Capias came to the Sherisf, and prayed that the party remain in Erecution for his debt also, and notwithstanding that the Sherisf let the Prisoner go at large, and upon both Write returned, Non est inventus, It was the opinion of all the Justices, That the Sherisf was not bound in point of Cscape to detain the Prisoner for the Debt of the Plaintisf; and it is not like where one is in the Fleet in Execution, there (if other condemnations in other Courts be notified to the Warden of the Fleet) he shall be chargeable with them all. It was holden also, per Curiam, That if the Body had been returned by Capias Urlagarum, that the Court at the prayer of the party would grant that the Prisoner might remain in Execution for the debt as in case of a Capias pro sine. Capias pro fine.

19 Eliz. In the Common Pleas.

CCCLI. The Lord Saint John and the Countes's of Kents Cafe.

A Evidence given to the Jury in an Action of Debt brought by the Grants of Exec Plaintiff againft the Defendant : It was fait by Dyer and Manwood enters of om-Justices, That if Executors grant omnia bona sua, that the goods which nia bona sua. they have as Erecutors do not pals, which fee 10 E. 4. 1. b. by Danby: 1 Cro.6. but the contrary was holden by Wray chief Justice of the Kings Bench, and by Plowden, in Bracebridges cale, P. 18 Elizand they denied the opinion of 10 E4. to be Law, for by such Grant made by Erecutors, the gods of the Testator do pals.

# CCCLII. 19 Eliz. In the Common Pleas.

Tote, It was faid by Dyer and Manwood, Austices, Chat if one be condemned in an action upon the Case, or Crespass upon Nihil Abatement of dicit, or demurrer, ac. And a Writ issueth forth to enquire of the Das Writ.
mages, and before the return of it the Defendant dieth, that the 3 Len.68.
Whit ihall not abate, for the awarding of the said Whit is a Judgsment. And it was said by Manwood, In a Writ of Account the Defendant is awarded to account; if the Defendant account, and be found in Arrearages and dieth, the Writ thall not abate, but Judgment thall be given that the Plaintiff thall recover, and the Executor thall be charged with the Arrearages, and yet account both not lye against them.

CCCLIU.

# CCCLIII. 19 Eliz. In the Kings Bench.

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Antel 29. 1 Cro.6 3.

Did recover in Debt against B. whereupon a Fieri facias ifflien A. to the Sheriff of Devon; and the Defendant, seeing the West Attachment of Execution in the Sheriffs hands, said to him, that he would pay Goodsafter the the Debt recovered at Exeter hith a day to satisfie the Execution, at Money is in the which day the Defendant pard the mony accordingly, and presently servid. Sheriffs hand, is void. Came an Officer of the City of Exercer, and attached the mony in the Sheriffs hand, supposing the said A. to be indebted so much to one C. in whose name he made the Attachment, and now on the behalf of the said A. a Certiforare was prayed to remode the Attachment hither; and it was therefore holden by the whole Court, that the Attachment was void, and a Certiforare granted: and wray said. If it can be proven by Dath, that if the Defendant vio procure, or was affenting to the faio Attachment, that Process of Contempt thouso issue against him; and the Sheriff demanded of the Court what return he thould make, because the monies were attached in his hands, and taken from him by force; to which Wray answered, That the Sheriff ought to answer the monies to the Plaintiff, which were once in his hands by force of the Execution, and that it was his folly to luffer the mony to be taken from him by colour of the law Attachment, and if the mony was taken by force, the Sheriff had his remedy by an Action of Trespals; for the Attachment was void, but the Sheriff at the return of the Witt ought to answer for the Mony.

# CCCLIV. 19 Eliz. In the Common Pleas.

Forfeiture 4 Len. 124 1 Les 60, 65.

Enant for life bargained and fold his Lands to A. and his beits, and afterwards levied a fine to the Bargainee, Sur conclans de droit come ceo, &c. It was holden by the Court, that it was a forfeiture committed by the Bargainee, not by the Bargainez, who at the time of the Fine had nothing to forfeit; and it was faid by Manwood Juffice, That if Cenant for life be difficed, and takes a fine, ut supra, of a Stranger, it is a forfeiture, and yet he in the Reversion hath but a right in Aeversion; so that it Cenant for life be diseised, and the Disselog commits Wash, he in the Reversion shall have an Action of Wash against Cenant for life; and if two Tenants for life bediseised. by two, A. and B. and one of the Cenants for life both refeale unto A. and the other Tenant for life both re-enter, he hath the apoiety in common with the other to whom the Release was made, and he hath revested the intire Reversion in him, in whom the Reversion was befoze, &c.

### CCCLV. 20 Eliz. In the Common Pleas.

# Bracebridges Cafe.

The Cale was, Thomas Bracebridge leifed of a Manoz in fee, lealed a Messinge, parcel of it to one Curtes for 21 years, and afterwards 35 H.8. leased the same to one Moore for 26 years, to begin after the expiration of the former Lease; and afterwards 5 E. 6. he enseoffed Griffith and others to the use of the Feosses themselves, and their peirs, upon condition, That if the Feosses did not pay to the said Thomas Bracebridge 2000 l. within 15 days after, that then immediately after the said 15 days, the Feosses should stand scaled of the said Banog fa to the use of the said Thomas Bracebridge, and Joyce his wife, for their swithout impeachment of Wast, and afterwards to the use of T.B. their second Son in tail, with divers Remainders over, the feoffees do not pay the faid mony within the faid 15 days, afterwards Curties attorns to the Feosfees. It was moved, if the Keversion of the Lands passed to Curties, passeth by the Feosfment of the Manor without attornment, which see Littleton 133, 134. 2. If by the attornment Artornment, of Curties, after the 15 days the uses can tise to Bracebridge and his wise, at. and it was said, That the Case 20 H. 6. Avowry 11,12. If a Manor be granted fog life, the remainder over in fee; Cenant fog life dieth, if the Tenants attorn to him in the Remainder, the same is good; and if a Neversion be granted to two, and one of them dieth, attornment to the survivoz is good; and if a Reversion be granted to bulband and wife in special tail, the wife vieth afterwards without issue. Attornment to the busband is good; and if a Reversion be given in Frank-marriage, and afterwards the Husband and Wife are divozced, and afterwards the particular Tenant attorns to the Wife, the fame is good; and by Manwood, If a Man feised of a Manoz, the demeshs of which extends into two Counties, and hathiste a Son and a Daugh ter by one woman, and a Son by another woman, and dieth, the elveft Son enters into the Demelns in one County only, and takes the profit in one County only, and dieth without iffue, the Daughter shall have and inherit the Demelns or Services whereas her Brother was feifed, and the Son of the half-blood the rest: And by Manwood, the attornment of Curties, who was the first Lessee, shall bind Moore the second Lessee, for he ought to attorn, against whom lieth the Quid juris clamat: And it a Lease for years be made of a Hanor, and the Revers fion of it be granted to another in fee, if the Leffee for years attorneth it thall bind the Tenants of the Manoz, 18 E. 2. A man feifed of a Manoz in the right of his Wife, leafed parcel of it foz years without his wife, the Aeversion thereof is not parcel of the Manoz; contrary if the Leafe had been made by Husband and Wife. And by Dyer, if Tenant in tail of a Manoz lealeth parcel for years, and afterwards makes a Feofinient of the wholemanoz, and makes Livery in the Demens not leafed, the Reversion of the Land leafed both not pals; for by the Feofinient a wrong is done to the Leftoz, which the Law shall not further enlarge than appeareth by the Deed; contrary in case of Cemant in fee of a Manoz, and that without Deed with Attornment. And it was the Cafe of one Kellet, 25 H.8. Kellet was Celtuy que we before the Statute of 27 H.8. of divers Lands by several Conveyances, the ule of some being raised upon Accovery, of some upon fine, and of lome upon feofiment, and he made a feofiment of all thefe Lands by Deed, with a Letter of Artomey to make Livery; the Accounty entred into part of the Land, and made Livery in the name of the whole, and it was agreed by all the Justices, that the Lands passed, notwithstanding in others possession, i.e. other Feosless: And by Oyer, If the Temants of a Aganoz pay their Kents to the Dissello, they may result again to pay them; and if a Leafe be made for years, the Remainder for life, if the Leffor will grant over his Neversion, the Leffee tor years hall Attorn, and his attornment thall bind him in the remainder for life; and if a Leafe be made to one for years, the remainder over for life, the remainder to the Leffee for years in fee. Row if the Leffee for years grant all his interest, ac. there needs no attornment: and it Stantee of a Aent in fee leafeth for life, and afterwards grants the Aeversion to another, the Attornment of the Ter-tenant is not requisite, but only of the Szantee for life. It was also holden, That this Attornment by Curties two years after the Aivery was sufficient, for it Relation. Hall have relation to the Aivery to make it parcel of the Azanoz, but not to punish the Leffee for waste done mean between the Livery and m er

2 Len.222.

the Attornment, but betwirt the Feosog and the Feossee lit shall pass ab initio. It was holden also, That although the uses so it limited are betermined by the default of payment within the 15 days, yet the Feosses shall take the Reversion by this Attornment to the second uses; and if I enfeoss one upon condition to enteoss. Who refuseth, now the feoffee hall be feifed to my ule; but if the condition were to gibe in tail, contrary : So here is a Limitation beyond the first use, which thall not be defeated for want of Attornment to the first uses; and here it was not the meaning of Bracebridge-to have the Lands again upon breach of the condition in his former effate, but according to the fecondule; and Judgment was given in the principal case accord. ing to the resolutions of the Judges, as aforesaid. And it was said by Harper Justice, Chat if a Feosiment in Fee be made to J. S. upon condition that he shall grant to A. a Rent-charge, who resuleth it, J.S.shall be feifed to his own ufe.

Antes 199.

# CCCLVI. 20 Eliz. In the Common Pleas.

Seifin.

he Case was this, Lord and Tenant by service to pay every year fuch a quantity of Salt; but fince 10 H.7. the Cenant bath always paro the money for Salt. The question was, If the Lord might resort to the first service, and if the money be Seifin of the Sale. And Manwood took this difference, i.e. where the Lozd takes a certain fum of money for the Salt, the same is not any Seisin, for the service is altered, as at the first, Socage Cenure was a work done by labor, i.e. Plowing; but now it is changed into certain Kent, and the Lozd cannot relozt to have his Plowing; and in Kent divers Cenants in ancient time have paid Barley for their Rent, but the same afterward was paid in a certain sum of money, so as now the Lord of Canterbury, who is Lord of such Tenements cannot now demand his Barly, ac. but if the sum which hath been used to be paid be incertain one year so much, according to the price of Salt, then such a payment of money is a sufficient Settin of the Salt. Quod fuit concessium per Curiam.

### CCCLVII. 20 Eliz In the Common Pleas.

Accompt by the Heir of a Copyholder.

Cuftom.

M Accompt, brought by an Deir Copyholder, for the profits of his Copyhold Lands taken during his Monage, the Defendant pleaded, That by the Custom of the laid Banoz, the Lord of the Banoz might assign one to take the profits of a Copyhold descended to an Infant, during his Monage to the use of the assignee, without rendring an accompt, and the same was holden to be a good Custom, as a sent granted to one and his beirs, to cease during the Monage of every beir; but admitting that the Custom were void, yet this Action doth not lye, for the Defendant bath not entred and taken the profits, as Prochein amy, in which Cafe although he was not Prochein amy, &c. he is Owen Rep. 36, chargeable, as Prochein amy according to his Claim; but here he claimer the by the Custom and Grant of the Lord, and not in the right of the Peir; and therefore it was adjudged in this time of this Quere, that if one entreth into Lands claiming by Devise, where in true. the Land deviced is entailed, he mould not be charged in accompt, ec.

#### CCCLVIII. 20 Eliz. In the Common Pleas.

Tote, It was holden by the whole Court, That the Statute of exposition of 32 & 34 H.8. of Wills, did not extend to Lands in London, but that the Statute, of the whole is good: And if Poules in London, parcel of the 32 and 34 polletions of Abbies came to the Crown up Diffolution, and he grants of Wills, them over to hold in chief by language fervice, these Lands are very fable: But it was holden, Chat the laid Statutes as Acs executed, ertended to Lands in London, and shall be good but for two parts: And if a man hath Lands in tail, and in feedingle, which are of bouble the value of the Lands in tail, and deviseth all his Lands, all the Land in feedingle shall pass. Dyer, One seised of three Manors, the one in Capite in fee, and two in Socage in tail, and deviseth all his land in Capite it is good against the being for the land. the one in Capite in Fee, and two in Socage in tail, and devileth all his Land in Capite, it is good against the king for all Capite Land, and he shall be tied to have the Lands in Socage, but it shall not bind the peir: And a devile of the third part (where all is deviled) is vold as well against the Deir as against the King. And he sato, Chatif a man be sessed of twenty Acres in Socage, and ten Acres in Capite, and deviseth two parts of his Lands, it is reasonable to sap. Chat all the Socage Lands shall pass; but if the devile was of two parts of all his Lands, it is otherwise, sor this word (All) implies, that the swo parts shall be per my & per tout, as well Capite as Socage, i.e. It was arrued by Fenner, That the Lands in London are now devisable as they gued by Fenner, That the Lands in London are now Devilable as they were before the Statute, for if the Devise of Lands in London be disturbed, he shall have Ex gravi Querela, otherwise it is of Lands at the Common Law; and if an Assize of Mondancester be brought of Lands in London, it is a good Plea to say, Chat the Lands are devisable: But in au Assise of Mordancestor of Lands at the Common Law, it is not any Plea: And if a man gives Lands at the Common Law, i.e. not devisable by the Common Law, he cannot be vise the Seversion, so the Statute shall not do wrong to the person, i.e. to the Donce, who there shall lose his Acquittal; But of Lands devisable by custom, it is otherwise; And if Land in a Burrough was devisable toz life by the Custom, and afterwards came the Statute of 23 H.8. which made all Lands devisable, now that Land is devisable for life by the Custom, and the Reversion by the Statute.

#### CCCLIX. 20 Eliz. In the Common Pleas.

Waft. M an Action of Waff, of Waff affigued in a Woo, the Jury viewed I the wood only without entring into it: And it was holden that the lame was fufficient, for otherwise it should be tedious for the Jury to have had the view of every flub of a Tree which had been felled. Pet Made Justice said, That if Wast be assigned in several comers of the Wood, then the Jury is to have the view of every comer; but contrary where Wast is assigned in the whole Wood; And if Wast be view assigned in every Room of a Poule, the view of the Doule generally is sufficient. And dyer Justice said, That if Wast be assigned in Everal places, and of some of them the Jury had not the view, of that they may find no Wast done. they may find no Waft done.

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#### 20 Eliz. In the Common Pleas.

### CCCLX. Sir Thomas Lees Cafe.

Election

I was holden per Curiam, That whereas Six Thomas Lee was feifed of a H anozand aliened the Manozarcept one Close parcel of the faid Manoz called Newdick, and there were two Closes parcel of the faid Manoz called Newdick, the one containing nine Acres, and the other containing three Acres; That the Alienee hould not chuse which of the said Closes he would have; but the Alienoz or Feoffor hould have the Election which of the said Closes should pass.

#### CCCLXI. 20 Eliz. In the Common Pleas.

Fines levied by Tenant in tail in Remainder. TEnant in tail, the Aemainder in tail, &c. Tenant in tail, in pofferfion, makes a Leafe for three lives, according to the Statute of 32 H.8. and afterwards dieth without iffue, he in the Remainder before any Entrylevieth a Fine, the same is good; for by the death of Tenant in tail without iffue, the Free-hold is bested in him in the Aemainder in tail: And of that opinion was the whole Court.

20 Eliz. In the Common Pleas.

# CCCLXII. Ferrand and Ramseys Case.

In an Ejectione firms brought of a boule in London, the Defendant pleaded, That long time before the Lestor of the Plaintist had any thing acc. One and Ramsey was seised in Fee, and died seised, and that the same descended to William Ramsey as Son and Deit to the sate and who was dissessed by Israel Owen, who leased to the Plaintist replicando, That the said Ann did not die seised, said, That before the Ejectment one Robert Owen was seised, and died seised, and then then descended the said boule to Israel Owen as Son and Deit of the said Robert, absque hoe, that the said Israel did dissessed in the said Ann, upon which they were at issue, and at That Crosson and Langhton were seised in Fee of the said Agestuage, and by Deed indented conveyed it to one John Ramsey, Robert Dakins, and sout others and their Deits, upon condition that the said Agestuage, and by Deed indented conveyed it to one John Ramsey, Robert Dakins, and sout others and their Deits, upon condition that the said Feosses, their Deits of Assigns hould pay to the said Ann and her beits, sir pounds thirteen shillings and sour pence: And also should enseos the said Ann, if to the same they were required by the said Ann in her life, ou within sour days next following such Aequest in Fee unto the use of the said Ann and her Deits, came a quando ad hoc per eandem Annam requisit. Sue in the said Ann should name, cum & quando ad hoc per candem Annam requisit. Sue the said Ann should name, cum & quando ad hoc per candem Annam requisit. Sue is shirt four days after such Request, the said Feosses of their Deits should enseos such said and best feeled of the said Ann, of such ather persons which the said Ann should name, cum & quando ad hoc per candem Annam requisit. Sue is shirt four days after such Request, the said Feosses of their Deits should enseos street so the said Ann, of such ather persons which there beits should name, cum & quando ad hoc per candem Annam requisit. Sue shirt sould be said and so the said Feosses of the said Ann and her Deits afterw

to William Ramfey. The Plaintiff confessed the Feofiment to Crofton and Langhton, to John Ramley and others, and themen further, That the fatDAnn required the furbiving feoffees to enfeoff one Robert Owen of the faid house, who three days after made the feoffment accordingly, Robert Owen enfeoffed John Owen, who died thereof seised, and from him the faid Poule Delcended to Ifrael Owen. Crafton Died, Langhton having ifflic two Daughters Died; All the feoffees but one Died, Am the time aforefaid bemanded the faid fir pounds thirteen shillings and four pence of the faid William Ramsey in another bouse in London, due at the Feast of St. Michael last before, who denied to pay it; the second Daughter of Langhton entred, and thereof enteoffed the laid Israel Owen, who leased the lame to the Plaintiff, and upon that Evidence the Defendant did Rents. demur in Law: And first it was resolved by the whole Court, Chatthe laid sum to be paid to the said Ann was not a Kent, but a sum in gross, because referbed to a ftranger, ec. which see Lit. 79. And by Munion Reversion. Juffice, If the words of the referbation had been twenty Robles Hent, pet it had been but a sum in gross, but otherwise it had been by devise. Also there is not any condition for the payment of it, but only a Limitation, for the word subsequent which limits the future use, takes away all the force of the words of the Condition, as 27 H. 8.24. Land given in tail upon condition that the Donee and his Peirs shall carry the Standard of the Donor when he goes to battel; and if he fail thereof, then the same to remain to a stranger, the limiting of the Remainder bath taken away the condition, and hath controlled it. and now the Condition is become a Limitation; But where the words whisequent are against Law, as if upon failer, that then it shall be lawful for a stranger to enter, et. these words because they are against Feofments Law (for a Rent cannot be referred to a Stranger, Sec.) do not be from the Con-upon conditions and the contrary by March Souther Conditions of the Con-upon conditions. Dition, by Mead, contrary by Munfon, for the Condition is utterly gone. and by Mead, Feofiment in fee upon condition, Chat if the fcoffoz hall do such a thing that he shall re-enter and retain the Land to the use of a stranger, theuse is boid, and the feoffoz shall hold the Land 1 Cro 401, to his own use. A feosiment in fee upon condition, That the feosifee 4022 hall marry my Daughter, and it he resule to marry her, that then he hall be seited to the use of 1.5. the same is not a Condition, but a Limitation; and in all cases afterwards of a Condition, where an Interest is limited to a firanger, there it is not a Condition, but a Limitation. And Mead faid, That the faid annual firm is not demandable, but the partyought to pay it at his peril, Lic. 80. But by Munson, it ought to be demanded, for so this word (Refuse) both imply: And when at the Regula. Another feofiment is made, by Munson, Mead, and Windham, the Kent is gone; but Dyer contrary, unless the feotiment be made to Ann her felt: And afterwards Judgment was given for the Plains tiff, Hil. 19 Eiz. Rot. 748. There was a Case betwirt Shaw and Norton. Shaw and One Green devised his Lands to A. and devised also, the said A. should Nortons Case: pay a Rent to b. and that B. might diffrain for it; and if A. fail of the payment of it, that the beits of the Deviloz might enter, the fame is a good Diffress, and a good Condition. And by Munson, Demand ought to be made of the Aent, for the words are (Refuse) which cannot be without Demand or Aequest: And it was certified, That such a Clerk resuled to pay his Cenths, and because it was express set down in the Certificate, that he was requested, ac. for that cause he was discharged. And it was also holden, That if Request be necessary, that in this case Request is to be made, That it ought to be made to the surviving feossec, or his heir, and not to the heirs of any of the Feossess who are

# Hill. 25. Eliz. In the Kings Bench.

### CCCLXIII. Lacyes Cafe.

Indiaments.

Acy was indicted of the death of a man upon Scarborough Sands, in the Lounty of York, between the high water mark, and the low water mark, and the same Indiament was removed into the faings Bench, and being arrangued upon it, be thewed, that the faid Indiament was fued by vertue of a Committion which three the first day of May, directed to the Justices of Assize, and other Justices of Peace in the said County, to enquire of all Qurders, Felomes, &c. and pleaded further, Chat the fecondday of May afozefaid, iffued another Commission directed to the Lord Admiral and others upon the Statute of 28 H. 8. cap. 15. hp force of which the faid Lacy was indicated of the same murder, whereof he was now arraigned, and the faid last Commission was, ad inquirendum, tam super altum mare, quam super littus maris, & ubicunque locorum infra jurisdictionen nostram maritimam: And that the said Indiatment taken before the Admiral, was taken before this, upon which he was arraigned, and upon the whole matter prayed to be dismissed: And the opinion of all the Juffices was, that the first Commission was repealed by the second, and to the Indiament upon which he was arraigned, taken, coram non Judice, 10 E.47. If a Commission for the Peace issueth into one County, and afterwards another Commission mueth to a Cown within the fame County and parcel of it, the first Commission is repealed, which Gawdy granted, if notice be given,&c. but Wray denied it; but the whole Court, by this last Committion to the Lord Admiral, the first Commis fion, as to the Jurisdiction in locis maritimis is determined and repealed; for these two Commissions, are in respect of two several Authorities, the first Commission meerly by the Common Law, the other by the Statute aforefaid, and thereupon the party was discharged against the Queen, as to that Indiament. Rote, that in the Argument of this Calcut was faid by Coke, and agreed by Wray, That if a man be fluck upon the high fea, whereof he vieth in another County afterwards. that this murder is dispunishable, notwithstanding the Statute of a

Commission repealed.

Ed.6.

Pasch. 25 Eliz. In the Kings Bench.

CCCLXIV. The Queen and Braybrooks Case.

The Queen broughts Wift of Erroz against Braybrook, The Cale was this, That king Ed.4. was seised of the Danoz of Markon, and nave the same to Lionel Lozd Norris, and A.M. and the Deirs of the body of the Lozd, the Remainder to H. Norris in Tail, L. and A. entermarry, L. suffered a common Recovery against himself only, without naming the said A. Hen. Norris is attainted of high Treason by Act of Parliament, and by the same Act all his Lands, Tenements, Dereditaments, Rights, Tonditions, &c. the day of the Treason committed, or ever after, &c. Hen. Norris is executed, Lionel dieth without issue, the Queen fallisted the said Accovery for one motety by Scire facias, because Anne who was inint-tenant with Lionel was not named party to the said Recovery: and afterwards the Queen granted to the Lozd Norris, Son of the said Hen. Norris, Manerium soum de Merston, & omnia jura in codem, and now upon the said Recovery, the Queen brought a Merit of Erroz, and it was argued by Egerton the Queens Sollicitoz, that this right to a Witt of Erroz is such a right as is transferred to the Queen by the Act of Parliament, for the words are, omnia jura sua quecunque, and here is a right, although not a present

2 Co. 93.

right, yet a right although in futuro, to it is a right of tome quality, as A. Cenant in Cail, the Kemainder in Cail to B.A. makes a feofiment in fee, B. is attainted of high Creason, and by such Act all his Lands, &c. given to the King. A. dieth without iffue, the Queen shall have a Formedon in the Remainder; and although the Queen hath granted to the Lozo Norris, Manerium fuum de Merston, & omnia jura in eodem, yet by luch general words, a Writ of Error doth not pals, which See 32 H.8. Br. Patents 98. And also this Action rests in privity of record, and cannot be displaced from thence, but by Act of Parliament, see Br. Chose in Action 14.33 H.8. for when the King will grant a thing in Action, he ought in his Patent to recite all the circumfrances of the matter, as the Right, and how it became a Aight, and because the Queen here both not make mention of this Right, as of the Entail, the Recovery, and the Attainder, for that cause the Right both not pals. The Case betwitt Cromer and Cranmer, 8 E lizithe Differiee was attainted of Treason, the Queen granted to the heir of the Diffeilee all the Right which came unto her by the Attaliider of his Ancestor, nothing passed, Causa qua supra; And always where the king grants any thing, which he cannot grant, but as king, that fuch a grant without special words, is to no purpose. Coke contrary, & he as greed the Case put by Egerton, for at the time of the Attainder, B. had a Right of Remainder; but in our Cale Hen, Norris had not any Right, but a possibility of a Right of Action, i.e. a Writ of Error; And he land that this Writ of Erroz is not forfeitable (for it is an Action which refis in pivity) no more than a condition in grofs, as a feofiment in fee is made upon condition of the party of the Feofior who is attainted ut fupra : This word (Aight) in the Act of Attainder hall not transfer this Condition to the Queen, and of the Act of Attainver to Hen. Norris, it is to be conceived That the makers of the Aa did not intend, that by the word (Right) every right of any manner, or quality whatfoever should pals to carry a Condition to the Queen, and therefore we ought to conceive, that the makers of the Act oft not intend to touch Rights which refted in privity : And as to the Grant of the Queen, to the Lord Norris of the Mannoz of Merston, Et omnia jura sua in eodem, he conceived, that thereby the Aight of the Whit of Erroz did pass; toz it is notlike Cranners Case, but if in the said Case, the Land it self had been set down in the Grant, it had been god enough, as that Cranmer being feifed in fee of the Manoz of D. was there of differed, and to being differed was attainted of high Treason: now the Queen grants to his beits totum jus foum in his Hanoz of D.&c. and so in our Cale, the Queen hath granted to the Lord Norris, Manerium fuum de Merston & omnia jura sua in eodem, &c. at another day it was moved by Plowden, that this Right of Whit of Erroz was not transferred to the Queen by the Act, but such Aight might be laved to a stranger, &c. the words of the Act are, omnia jura sua, and this word (sua) is Pronomen possessions, by which it is to be conceived, that no Right should pass, but that which was a present Aight, as a Right in possession, but this Aight to a Chit of Erroz, was not in Hen. Norris at the time of his Attainder, but it was wholly in him against whom the extensions and the conceived was not in the analysis and therefore if in a Precise good redder. toneous Judgment was had: and therefore if in a Præcipe quod reddat, the Tenant bouch and loseth, and Judgment is given, and before Execution, the Tenant is attainted by An of Parliament, by works ut supra, and afterwards he is pardoned, the Demandant suethfor Execution against the Tenant, now notwithstanding this Attainder, the Tenant may sue Execution against the Aouchee, and afterwards Wray chief Instice openly declared in Court, the opinion of himself and all his companions Justices, and also of all the other Institute of the opinion of himself and all his companions Justices, and also of all the other Institute of the opinion opi stices to be, That by this Act of Parliament, by which all Lands, Tenements, Perevitaments, and all Rights of any manner and quality whatfoever Henry Norris had, the day of his Attainder, oz ever after, Lionel then being alive, and over-living the faid Hen. Norris, that this Mit of Erroz was not transferred to the Ducen: And that the faid Act by the words aforefaid could not convey to the King this possibility of right, for at the time of the Attainder, the Right of the Mit of Erroz was in Lyonel, and Hen. during the estate tail limited to Lyonell had not to do with the Land, nor any matter concerning it: And Judgment was given accordingly; And it was holden, That he in the Aeversion, or Aemainder upon an Estate tail might have a Mit of Erroz by the common Law, upon a Aecovery had against Tenant in tail in Aeversion.

# COCLXV. Mich. 25, & 26. Eliz. In the common Pleas.

Copy-holder.

In Trespals brought by a Copy-holder against the Lord for cutting down and carrying away his Crees, &c. It was found by special Aeront, That the place where, &c. was Customary lands of the Plaintists, holden of the Defendant, and that the Trees whereof, &c. were Chery Trees, de magnitudine sufficient essendi marenium, and that the place where they growed, was neither Orchard, nor Garden: It was said by the Court, That by the Custom the Copyholder could not cut down such Trees, but the Lord might, and that the cutting down of such Trees which were not Wash, the Copy-holder might justifie without punishment: but because by the Aeroia it did not appear that the Trees so which the Action was brought were Timber in sacto, but only de magnitudine essendi marenium, the Plaintist had Judgment.

Mich. 25, 5 26. Eliz. In the Common Pleas.

COCLXVI. The Lord Staffords Case.

Extent.

Don Accovery in debt against the Lord Stafford, certain Lands of the Lord were extended by Elegic; The Queen because the Lord Stafford was endebted unto her, by Prerogative oussed the Tenant by Elegic: Fleetwood Serieant moved the Court in the behalf of him who recovered, and surmised to the Court that the Queen was satisfied, and therefore prayed a Ae-extent; but the Court would not grant it, because they were not certain of the matter, but advised the party to sue a Science facias against the said Lord Stafford, to know and shew cause, why a Ae-extent should not slive sorth, the Queen being satisfied, &cc.

Mich. 25, & 26. Eliz. In the Kings Bench.

CCCLXVII. Gibbs and Rowlies Case.

Tithes.

Symon Gibbs Parton of Beddington, Libelled in the Spiritual Court as gainst Rowlie, for Tithe Wilk, Rowlie upon surmise of a Prescription, de modo Decimandi, obtained a Prohibition, which was against Symon Gibbs, Rectorem Ecclesix parochial de Nether Beddington, and the parties were at Issue upon the Prescription, and it was found for Rowlie. Egerton Solicitor moved against the Prohibition, because the Libel is against Gibbs, Rectorem Ecclesix paroch. de Beddington, and the Prohibition was, de Nether Beddington, and it was not averred that Beddington in the Libel, and Nether Beddington, is unum & idem, & non diversa; It was said by the Court, That upon the matter there is not any Prohibition against Rectorem Ecclesix de Beddington

Prohibition.

Beddington only, and therefore faid to the Plaintiffs Counsel, let the Parlon proceed in the Spiritual Court at his peril.

Mich. 25, 5 26. Eliz. In the Kings Bench.

CCCLXVIII. Ruffell and Handfords Cafe.

Ruffell brought an Artion upon the Case against Handsord, and declared, Quod cum quoddam molendinum ab entiquo suit erectum, upon such a Aiver, Nusance. dequo, once Thomas Ruffell whose weit the Plaintist is, was seised in his Demelh as of Fee, and deed thereof seised, after whose death the same descended to the Plaintist, by some of which the Plaintist was seised in his Demesh as of Fee, and so seised, The Defendant upon the same River had seppend a new world, per and suring a provided contains a series of the upon the same River had seppend a new world. Demely as at fee and to telled, The Defendant upon the lame kinet had ledged a new Afil, per quod cursis aque prædict, coarctatus est, and upon Mot guilty. It was found for the Plaintiff: It was moved in Arrest of Judgment, That it is not layed in the Declaration, that his Will had been a Will time out of mind, c. And then if it be not an ancient will time out of mind, c. it was lawful for the Defendant to erect a word of new Will; And it was laid, That these words (abantiquo) are not sit of Prescription. Unfificant words to set forth a Prescription, but the words, a tempore come contraris memoria hominum non existic, are the usual words for such a purpose; See the Boch of Entries 10,11. See 11 H. 4. 200. If I have a will and another ledges another Will there, and the Willer hinders the Mater to run to my will, or both any such Rusance, an Action lyeth Mater to run to my Will, or doth any luch Mulance, an Action lyeth Roll. 140. Without any Prescription as it seems by the Book in 22 H. 6.14. The Plaintiff declared, That he was Lord of such a Cown, and that he and all his Predecestors, Priors of N. Lords of the same Town, have had, within the same Cown, four Wills time out of mind, &c. and that no other person had any Will in the same Town, but the Maintiff and his other person had any Asill in the said Town, but the Plaintist and his Diedecestors, the said sour Asills, and that all the Tenants of the Plaintiss within the same Town, and all other Asiants there, &c., ought, and time out of mind, &c., had used to grind at the said Bills of the Plaintiss, and that the Defendant, one of the Tenants of the Plaintiss, and that the Defendant, one of the Tenants of the Plaintiss, had erected and set up a boose said within the said Town. tik, and that the Defendant, one of the Tenants of the Plaintik, had erected and let up a booke Will within the laid Cown, and there the keliants grinded, &c. And it was holden, Chat peradventure upon uch matter an Action lyeth, because the Defendant being one of the Cemants of the Plaintik is bound by the Custom and Prescription, so as he path offended against the privity of the Custom and Prescription.

And as to the Cale in question, It was the opinion of all the Indices, Hob. 139.

That if the Will whereof the Plaintik hath veclared, he not an an Ance 168.

That if the Will whereof the Plaintik hath veclared, he not an an Ance 168.

That if the Will whereof the Plaintik hath beclared, he not an an Ance 168.

That if the Will whereof the Plaintik hath be considered to be good anough, notwithstanding the Exception. Another Exception was taken to the Plaintik, and the Descent to the Plaintik, by force of which he was sailed in his Demesh, so, without the wing that after the death of the Kather that he entred into the said will, &c. so as no settles in sail is also deed by the Carretton was not set and in Lavish in sail.

In sail also deep the factor that he entred into the said will, &c. so as no settles in sail in sail is also deep that he entred into the said will, &c. so as no settles in sail in sail is also deep that he entred into the said will, &c. so as no settles in sail is also deep the sail of the Father that he entred into the said will, &c. so as no settles and in Lavish said deather, he cannot punish this personal wrong, sone the Exception was defined as design. And afterwards the Plaintik had sudgment to recover her defined as design, and afterwards the Plaintik had sudgment to recover her defined as the Carretton the Carretton.

Eliz. Dyer 248.

Seifin in fact;

### Mich. 26. Eliz. In the Exchequer.

# CCCLXIX. Cleypools Case.

Informations, upon the Statute of 5 Eliz. of Tillage.

Momation in the Erchequer against Cleypool, upon the Statute of Tillage, Eliz. letting forth, That the Defendant hath converted types hundred Acres of arable Lands of Tillage, to patture, and the same conversion hath continued from 15 Eliz. unto the two and twentie eth of Eliz: The Defendant as to the Conversion pleaded Not guilty, and as to the Continuance, the general Pardon by Parliament, 23 Eliz. upon which the Actorney general Dio demue in Taw. It was argued, That that pardon did not extend to the continuance of the fato Convertion: And first the Barons were clear of opinion, Chat if A.be feised of Arable Lands, and converts the same to passure, and so converted, leaseth it to B. who continues it in passure as he found it, he thall be charged by that Statute: And it is not any good Construction, where the Erception in the pardon is, excepting the converting of any Land from Cillage to Pasture, made, done, committed, or permitted, that the Conversion excepted out of the pardon shall be intended and construed the bare act of Conversion, but the whole offence, ithe continuance and practice of it is understood: As if by general pardon all intrusions are excepted, now by that, the instant Act of Intrusion, i. the bare Entry is not only excepted, but also the continuance of the Intra-sion, and the perception of the profits: And note, The words of the Statute are (conversion permitted) and Conversion continued is Con-version permitted: And the statute both not punish the Conver-tion but also the conversion and the first but not punish the Converfion, but also the continuance of the Convertion, for the penalty is appointed for each year in which the Conversion continues: And Eggron Solicitor put this Cale, 11 H.8. It was enacted by 3 H.7.cap. 11. Chat upon Recovery in Debt. if the Defendant in velay of Execution suesa Wit of Erroz, and the Judgment be affirmed, he hall pay damages, now the case was. That one in Execution brought such a Wit of Errozand the first Judgment is affirmed, he thall pay damages, and yet here is not any belay of the Execution, for the Defendant was in Execution before, but here is an Interruption of the Execution, and the Statute did intend the Execution it felf, i. the continuance in Execution, ibidem moraturus quousque: It was said on the other for, Chat the conversion and continuance thereof are two several things, each by it felf, and to the convertion only being excepted in the parton, the continuance thereof remains in the grace of the parton: And it appear eth by the Statite of 2, and 3. Ph. & Ma. That convertion, and continuance are not the fame, but alia, arque diversa, and differe things firthe tentideration of the Law; for there it is enaced. That if any performal have any Lands to be holden in Tillage according to the fall Statute, but condected to Passure by any other person, the Commissioners, see have authority by the salo Statute to enjoyn such persons to convert such Lands to Tillage again, see. And in all cases in the Law, there is a great difference betwiet the beginning of a wrong, and the continuance of it: As if the Father levveth a Nusance in his own Lailos to the offence of another and dyeth; an assign the the definite the beit so the continuance of that wrong, but a Quod permittar. See F.N.B. 124. It may advise the permittat, See F.N.B. 124. It was adjoined.

### Mich. 26 Eliz. In the Kings Bench.

### CCCLXX. Powley and Siers Cafe.

Powley brought Debt against Sier Executor of the Will of A: The Debt.

Defendant demanded Judgment of the Wixt, for he faid, That one uses Executor of the laid A. and that the laid B. did conssitute the Defendant his Executor, so the A. and that the laid B. did conssitute the Defendant as Executor of the Executor, and not as immediate Executor to the said A. The Plaintist by Reply said, That the said B. before any produce of the Will, or any Administration doed, and so maintained his Will. Wray Justice was against the Wit, for although here be not any produce of the Will of A. or any other Administration, you when B. made his Will, and the Defendant his Executor, the same is a good acceptance in Law of the Administration and Execution of the sirst Will, for the Defendant might have an Action of Debt due to the first Cessaty: Gawdy and Aylist Justices, The Whit is good: See Dyer, 1 Cro.211: 24 Eliz. 372. against Wray.

### CCCLXXI. Pafeb. 26 Eliz. In the Kings Bench.

The Cale was: A leised of certa in Lands, bargained and fold by Indenture all the Crees there growing, Habendum, succidendum, &exportandum, within twenty years after the date of the laid Indenture, the fale of Trees twenty years expire; The Bargainee cuts down the Crees, A. brought an Acion of Crespals for cutting down the Crees: And by Wray, Illustice. The meer property of the Crees was in the Bargainee, and the Limitation of time which cometh after is not to any purpose but to ballen the cutting of the Crees within a certain time, within which, if the Clendee doth not cut them, he should be punished as a Crespassor as to the Land, but not as to the Crees: Gawdy contrary; And that upon this Contract, a conditional property wells in the Clendee, which ought to be pursued according to the direction of the condition, and hecause the condition is broken, the property of the Crees is we see that in A.

Pajch. 26 Eliz. In the Kings Bench.

#### CCCLXXII. Curriton and Gadbarys Cafe.

In action upon the Cale, the Plaintiff verlaced, Chat the Defen. Leafed bant in confideration that the Plaintiff should make a leafe for life to the Defendant of certain Lands, Habendum after the beath of A. before the tenth of August next following, promised to pap the Plaintiff ten pounds, the first day of May next after the promise which was before the tenth of August. And the truth was, Chat the laid ten pounds was not pald at the day, or supra, nor the laid Lease made: And now hoth sides being in default, the Plaintiff rought an action, It was said by Wray Justice, If the Plaintiff had made the Lease according to the consideration, and in performance thereof the action would have spen, but now his own default had barred him of the Action: But for another cause, the Declaration was holden insufficient, so, here is not any Consderation, so the yomise is, in consideration that the Plaintiff shall lease to the Defendant so, life, Habendum after the death of A. which cannot be good by way of lease, but ought to enure by way of grant of the Aeversion, so as here is no lease, therefore no consideration, and notwithstanding that

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Cafe.

that if a Leale be made for life, Habendum after the death of A.the Habendum is void, and the Leafe thall be in possession according to the Demifes, pet the Law will not give fuch construction to the words of a 1920. res, yet the Law will not give luch condituation to the words of a 1920 mile, Contract, or Alimplit, but all the words ought to be wholly respected according to the Letter, to as because that no Lease can be made according to the words of the Confideration, no supply thereof that be by any favorable configuration. And so it was adjudged: But before the same imperfection was elpied. Judgment was entred, and therefore, the Court awarded that there should be a collegeneous, entred upon the Roll, for it is hard as it was said by Wray to drive the party to a triff of Errorin Parliament, because Parliaments are not now so frequently holden as they have used to be holden, and the Execution was staid accordingly. was staid accordingly.

Pasch, 26 Eliz. In the Kings Bench.

CCCLXXIIL Willis and Crosbys Case.

Front.

Amercement

In a Writ of Erroz, It was affigued for Erroz, That whereas in the first Action, the parties were at issue, and upon the Venire facias one Great gory Tompson was returned; But upon the Habeas Corpora, George Tompson was returned, and the Jury was taken, and found so the Plaintiff, and Audment given accordingly; It was argued on the part of de Plaintiff in the first Acton; that the same is a thing amendable: as 9 E.4.14 A Jury was impannelled by the name of I.B. and in the Habes Corpora he was named W. Band by such name swoon, &c. And upon Exa-mination of the Sheriff, it was found that he was the same person who was impannelled, and it was amended and made according to the Pannel'; But the opinion of the whole Court was, That as this cale is it was not amendable, and it is not like the cale of 9E.4 for there the Cramination was before the Aerdia when the Sheriff was in Court, but here it is after Aerdia, and the Sheriff is out of Court, and cannot be examined, and for thefe causes the Judgment was reverted.

Pasch. 26. Eliz. In the Exchequer.

CCCLXXIV. Ognell and the Sheriffs of Londons Cale.

Efcape. 1 Cro. 164.

Gnell brought Debt upon an Escape by Bill in the Erchequer a-against the Sherists of London, the Cate was, That one Cross was bound to the now Plaintiff in a Recognifance, and afterwards committed for Felony to the Pillon of Newgate, of which he was attainted and remained in Pillon in the custody of the Sheriffs: Afterwards Oenell fued a Se. fac. upon the fato Recognifance against Crofis, the She riffs returned a Cepi, and the especial matter asozesaid, and after Judgment given against Cross for Ognell, Cross got his parton, and escaped: It was argued. Chat notwithstanding this Attainder, Cross is subject to the Execution obtained upon the Aecognizance: See the case of Escape betwirt Maunser and Annelley, 46 Eliz. in Bendloes case, 2 E 4. It is said by Warman, Chat a man out-lawed for Felony shall answer, but shall not be answered: See 6 E. 4 4 One condemned in Redisciss, was taken by a Capias pro sine, and committed to Proceedings of the said committed to Proceedings of the said committed to Proceedings of the felony, yet he shall remain in Execution for the party, if he will; Sur if the party he gares once in Aerocution for the party, if he will; But if the party be once in Execution for the party, and then out lawed of felony, it feems by 4E. 4. Fire Execution, 13-that the Execution is gone. And all the Barons were clear of opinion 1411 2

omin the principal cale for the Plaintiff. And they also fato, Chariff one who hath a Protection from the king be taken in Execution, and Escape, the Saoter shall answer for the Strape, and that was some should be printiffed the Case. And afterwards Jungment was given for the Printiffed Holes Case. againd her being bead, and nedsoused adamonu iged bon uits's and office Court around William Lodge Secretors of the late Lady Lodge, to them court we the ferrence given against the late Lady Lodge though not be

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gial of things Hill, 26 Eliza In the Kings Bench a north at 2 minut to the bagain and there the lentence long

and said the . of CCLXXV. Bishop and Redmans Calents (1) fame teng not craimmonic into Spiritual Court, and thereapon

Bichep, a Dorog of the Civil Law, brought an Autow of Covermus Be modifif Redman Archivencon of Canterbury, and wellaten upder an intenture, by which the Defendant old conflicture the Plaintiff Offichier man of his Archoeatoney for three years, and gaue to firm by the last Indentities, Authoritisem admittendi, & inducendi quosconque Clericos ad que conque beneficia Ecclesiatica infra Archidiaconatum predist, and also Diobate of Cillis, and further granted to him, omnem & oning dami hihldiaconatum jurildictionem suam prædict' absque impetitione, derlegation quellin eidesse after which Doctor Young was created Bishop of Rochester, which is in the Auristiation of the faid Archdeacoupp, and the Defendant took upon him to enthunize the laid Bishop in his faid Church, and tak of him for his fee twenty krobles, whereupon the Plaintiff wought this Action. It was moved for the Petendanty that upon the matter the action both lye; for the Office of enthromizing or entialling of a Bilhop both not pais by the law Indenture, not is there any more the Indenture that both extend unto it; for the Bilhop is not actack, and the Plaintist by the Inventure hath not to do but with Clarks, not with Bishops; and it appeareth by the Grant of Sub-witts, by the Clergy in Parliament, that a Bishop and a Clark are nisting things. See Instrumentum hereof, Presatus & Clericus, &c. Alsa the Plaintist hath not to do with a Bishoppick, but with Benefices, and a Biffopick is not a Benefice, but a higher thing; and further the Plaintiff hath power to admit and induct, which both not extend to infialling, or inthronization, for that belongs to a Bishop; and the court was clear of opinion, That by this Grant there did not pass any power to instal of inthionize Bishops; and the general words, i.e. omnem & omnimodam juristictionem Archidiaconatum prædictam, did not mend the matter, forthe word (Prædictam) doth not restrain the words, Words which Omnem, & omnimodam, &c. but admitting that; It was moved, If upon amount to Cothis Indenture Covenant lieth, for there is not any express Covenant, vet the words absque impetitione, denegatione, restrictione, do amount to in much, to make the Desendant subject to his Action, if the matter in it felf would have ferved for him, and so was the opinion of the Court. 30 037

Set of Brit. 26 Eliz. In the Kings Bench.

CCCLXXVI. Lady Lodges Cafe.

The Lady Laxton of London by her Will bequeatheb to Matthew Lude Prohibition. dington, and Andrew Luddington, Teneral Legacies in monies to be Poph. 1. mid to them respectively at their several ages, ac. and made the Lady Dyer 19.
Lodge her Daughter her Executric and vied, Andrew vied before his full age, Maris wook Letters of Administration of the goods of Andese, and fred the Lady Ladge in the Spiritual Court for the Legacy bequeather

bequeathed to Andrew; before which Suit beging, the Lady Lodge, with Sir Thomas her Busband, gave all the goods which the had as Executor of the faid Lady Laxon to Sir William Cordel Agatter of the Rolls, to of the laid Lady Laxon to Sir William Cordel Agaster of the Roll, and to William Lodge Son of the laid Sir Thomas and his Lady, depending which Suit the Lady Lodge vied, after which sentence was given against her being dead, and now a Citation was out of the Spiritual Court against William Lodge Executor of the said Lady Lodge, to shew cause why the sentence given against the said Lady Lodge should not be put in Execution against him; and sentence was given against the said William Lodge, who appealed to the Delegates, and there the sentence was affirmed. And now came William Lodge into the Kings Bench, and set forth the grant of the said Lady Lodge, as associated, and that the same was not examinable in the Spiritual Court, and thereupon paped a Prohibition: And Awbrey, Doctor of the Civil Law, cane into Court to inform the Justices, what their Law was in certain into Court to inform the Justices, what their Law was in certain points touching the Case in question; and as to the sentence given against the Lady Lodge, after her death he said, That if the Defendant died before issue joyned, which is called Litis contestationem, the Suit shall cease, but if he dieth after Litis contestationem, it is otherwise, so in such Case the Suit shall proceed; for after Litis contestationem, the right Swindurn 212.

Bro.Devise
27.45.

Office of Exec.

Office of Exec.

Office of the Suit is so bested in the Proctor, that he is a person Quable until the end of the Suit: and also he reported their Law to be, \* That if a Legacy be bequeathed to an Infant to be paid when he shall come to the Age of twenty one years, if such a Legacory dieth before such age, pet the Executor of Administrator of such Legator that five for the faid Legacy prefently, and thall not expect until the time, in which if the Infant had continued in life he had attained his full age. Am as to the Prohibition it was argued by Egerton Societies General. That the Grant aforesaid is not triable in the Spiritual Court: As if the fait Lady Lodge had luffered a Recovery to be had against her an ere cuto by Covin, c.t. the same is not examinable in the Spiritual Court, but belongs to the tempozal Conusans, and therefore he proven a Prohibition: But on the other side it was said. That if the Prohibition be allowed, the Legatory hath no remedy; but that was denied, for the party might sue in the Chancery. And after the Prohibition granted, the Court awarded a special Consultation, quarenus non extendar ultra manus Executoris, & quarenus non agitur de validitate suchi, i, the Grant afozelaid.

347. Shep. Touchftone, &cc. 45 4. Plowd.345. Orphans Lcgacy 281. Note, It was adjudged contrary to this, Mich An Dom. 1653. in the Kings Beach, in Doomlowes Cafe. Poph. 11.

Hill. 28 Eliz. In the Kings Bench.

CCCLXXVII. Huddy and Fishers Case.

Debt,

Attaint.

Ebt was brought upon a Bond, the Condition of which was for the performance of Covenants, Grants and Agreements in an Indenture: And in the Indenture it was recited, That in confideration that the faid Huddy should build a will upon the Land demised by the Defendant to the Plaintiff by the same Indenture, and a Mater-course by the Land demised, the Defendant leased the said Land to the Plaintiff, and the Leafe was by the words Dedi & concessi. And the Plaintiff assigned the breath of the said Covenant in Law, in that the Defendant had stopped the said Water-course so made by the Plaintiss, upon which they were at Issue, and it was found for the Plaintiss, upon which the Defendant brought Attaint, and the saile oath was found; and it was moved in Access of Judgment, That here is no Islie, and then by confequence no Aerdia, and then no faile Dath, and then no cause of Attaint; for here the Islae is taken upon the stopping of the Water-course, which upon the hewing of the party is not any cause of Action, for in the Indenture there is not any express Covenant, Clause, or Agreement, that the Lessee should enjoy the Water-course so to be made, only there is a Covenant in Law riling upon these words Dedi & concessi, which cannot extend to a thing not in effe at the time of the making the Indenture. Coke, who argued for the Defendants in the Attaint resembled this case to the case in for the Detendants in the Attaint relembled this cale to the case in 23 E 3. Garr. 77. Colhere it is holden, that the warranty knit to the Hand not shall not extend to the Cenancy escheated: And 30 E 3. 14. The Secovery in value shall not be in larger proportion than the Land warranted was at the time of the warranty made. So in our case, this Covenant shall not extend to any thing which was not in essentiate time of the Covenant made: And see 25 Ast 2. where the Court shall reject a Clerbick, or part of a Clerbick, ac. And because the now Plaintist might after the Clerbick have alledged the same in arrest of Judgment, which he did not, he shall not be believed by Attaint, but it shall be accounted his folly that he would not so his own ease, and to thall be accounted his folly that he would not for his own ease, and to abold circuity of Action thew the matter in stay of Judgment: As 9.E.4.12. by Littleton: If a man be Induced of Felony, it the Judgment be inlusticient, but he takes not advantage of it, but pleads the general Islue, and is acquitted, he shall never after have a calrit of Conspiracy. &c. And so another cause Judgment ought not to be given in this Cale, because it both not appear that Execution hath been sued, and then here is no party grieved: And then this action being conceived upon the Statute of 23 H. 8. Cap. 3. which gives it to the conceived upon the Statute of 23 H. 8. Cap. 3. which gives it to the party grieved both not lye, for a party grieved cannot be intended without Execution fled. See 21 H.6.55. by Palkon; Falle oath, Judgment, and Execution do entitle the party grieved to Attaint. And flee the Stat. of 23 H.8 which enaces, That the party shall be restozed to as much as he hath loss therefore be ought to lose (by Execution) before he be a person able being this Action: But as to that matter, see the Statute of 1 E.3.6. by which it is Enacted, That the Justices shall not leave to take Attaint for the damages not paid, so as before the said Statute no Attaint lay before Execution, 33 H.6.21. by Prison 5 H. 7.22.t.E.1. Attaint 70. 8 E.2. Assize 396. And it was moved, That for another cause the Attaint both not lye, as it is pursued in Process upon it, for cause the Attaint both not lye, as it is pursued in Process upon it, for the Plaintist hath not pursued the Statute, upon which the Attaint is grounded, for the satute gives special Process in this case against the Petit Jury, Grand Jury, and the party, viz. Summons, Re-summons, and Distress infinite; but in this Case the Plaintist hath sued otherwise, which is against the direction of the Statute. And that was taken to be a material Exception by Clench and Gawdy Justices, for the Aerola doth not lave the matter of Process in this case by the Statute of 18 Eliz. which doth not extend to proceedings in penal Causes; which see, by the words of the Statute, by an express Proviso: But Quære, If it be a penal Statute, because a lesser punishment is enacted by it, than that which was before inflicted upon such offenders: And as to the matter of Execution, Quære, If the Plaintiff be not pars gravatain hoc only, that he is subject to the said Judgment, and so liable to Execution.

Hill. 28 Eliz. In the Kings Bench.

CCCLXXVIII. Penruddock and Newmans Cafe.

In an Ejectione firmæ, the Plaintiff veclared upon a Leafe made by the Execution.

Lozd Morley, and upon Not guilty pleaded, this special matter was 2 Len. 49.

tound, that William Lozd Mountegle, seised of the Danoz of D. whereof ec. became bounden in a Statute in such a sum to A. who died, the Crecutors of A sued Execution against the said Lord, i upon the Extendi facias, a Libertate iffited forth, upon which the faid Manor was

Return of the Sheriff. 4 Co. 67.

delivered to the faid Executors, but was not returned. It was further found, Chat the faid Executors being to possessed of the faid Mano, the faid Lord commanded a Court Baron to be holden there, which was holden accordingly by the lufferance of the Executors, and the faid Executors were also present, at which time the Executors in the presence of the said Lord said these words, viz. We have nothing to do with this Manor. And upon this Aerdia two things were moved, If because the Liberate was not returned, the Execution was good: And as to that divers Books were cited, 21 H.6.8.18 E.3.25. And it was faid that there was a difference betwirt a Liberate, and a Capias ad Satisfaciendum, and a Fieri facias, for these carries are conditional, Ita quod Habeas Corpus, &c. Ita, quod habeas denarios hic in Curia, 3 H.7.3. 16 H.7.14. But contrary in the Mont of Liberate, Habere facias feifinam, for in fuch Maries there is not fuch clause, and therefore if such Writs be not returned, the Execution none by virtue of them is good enough: And see 11 H.4. 121. If the Sheriff by force of an Elegic delivers to the party the moiety of the Land of the Defendant, and both not return the Wit; if now the Plaintiff will bring an Action of Debt de Novo, the Defendant map plead in Bar the Execution aforcaid, although the Wirt of Execution were not returned, and yet the Execution is not upon the Record. And fee the cafe there put by Hankford: And it is not like to the cafe of Partition made by the Sheriff, the fame ought to be returned, becaule that after the return thereof, a new and lecondary Judgment is to be given, i. Quod partitio prædicta firma & stabilis maneat in perpetuum, firma & stabilis in perpetuum teneatur, see the Book of Entries 114. And Egerton Solicitor cited a cale lately adjudged betwirt the Carl of Leicelter good enough. Another matter was moved; Angir, that here be a good Execution, if now the Executors being in Mession of the said Manor by force of that Execution, and permitting and fuffering the Conulog to hold a Court there in the Manoz-house, and faying in his presence the words aforesaid, if the same both amount to a Surrender by the Crecutors to the said Conuls, or not. And Wray chief Justice said, That here upon this matter is not any Surrender, sor here the words are not addressed to the said Conusor who is capable of a Surrender, not to any person certain: And it is not like to the case of 40 E.3.23,24. Chamberlains Assize, where Tenant so life saith to him in the Reversion, That his will is that he enter, the same is a good Surrender. for there is a person certain who can take it; but contrary in this case, for here it is but a general speech. It was adjorned.

Surrender.

Earl of Lei-

# Pajch. 28 Eliz. In the Common Fas.

CCCLXXIX. Baskervile and the Bishop of Herefords Case.

erare Impedit. In a Quare Impedit by Walter Baskervie, against the Bishop of Hereford, &c. The Plaintiff counted, That Sir Nicholas Arnold was letted of the Advowson as in gross, and granted the same to the said Baskerville and others, to the use of himself for life, and afterwards to the use of Richard Arnold his Son in tail; Proviso, That if the said Nicholas die, the said Richard being within age of twenty three years, that then the Grantees and their beirs shall be seised to them and their beirs until the laid Richard hath accomplished the laid age: Nicholas vieth, Richard being of the age of fourteen years, by force of which the Grantees were possessed of the laid Advowson, and afterwards the Church became void, and so it belonged to them to present: And Exception was taken to the Count, because the Plaintist had not aberred the Richard Richard, upon whole life the Interest of the Plaintiss doth depend. Averance. And Gawdy Serieant, likened it to the Case of the Parson which hath been adjudged, Chat where the Lestee of a Parson brought an Ejectione firms, and it was found for him, and in arrest of Judgment exception was taken to the Declaration, because that the life of the Parson was not averted, and for that cause Judgment was staped. Anderson chief Justice: Apon the dring of Six Nicholas Rich, being but of the age of fourteen peats, an absolute Interest so, nine years bests determinable upon the death of Richard, or rather, they are selsed in the determinable upon the coming of Richard to the age of twentythree many. Rhodes and Windham contrary: That here is an Interest in the peats. Rhodes and Windham contrary: Chat bete is an Intereff in the peats. Rhodes and Windham contrary: Chat here is an Interest in the Giantees, determinable upon the death of Richard within the Term, for if Richard dieth without issue within the Term, the Remainder is similed over to a stranger. And as to the Exception to the Count, it does not was argued by Puckering Serjeant, that the Count was good enough, it for although the life of Richard de not express aberted, yet such a very social dictured in the stranger of supplied: For the Count is, That dictured in the solid dictor Richard de not expressly aberted, yet such a very social dictor Richard de not supplied: For the Count is, That dictured solid dictor Richard de not supplied: For the Count is, That dictured in the solid dictor of the solid dictor of the solid dictor of the solid dictor of the solid dictor, quo quidem sic possession existence, the Church became void, and not selected he could not be, if the said Richard had not been then also. possessed be could not be, if the said Richard had not been then althe, and the fame is as frong as an Averment. See 10 E.4.18. In Crefpals for breaking his Close, the Defendant pleads, Chat A. was feiled, and did enfeoff him; to which the Plaintiff laid, That long time before A. had any thing, B. was feifed and leafed to the faid A at will, who enseoffed the Desendant, upon which B. did resenter, and leased to the Plaintiff at will, by sozee of which he was possessed until the Desendant did the Trespals, and the same was allowed to be a good Replication, without averting the life of B. who leafed to the Plaintist at will, for that is implied by the words, i. Virtue cujus; the Plaintist was 1 Cro. 766. possessed until the Defendant did the Ttelpass. And see also 10 H. 7.

12. in an Asize of Common, The Plaintist makes title, that he was sufficient a Constitution of the Plaintist makes title, that he was kifed of a Hestuage, and of a Carve of Land, to which he and all those whose estate, ac. have had Common appendant, ac. And doth notsay, that he is now seised of the Dessuage: But this Exception was disallowed by the Court, soz seisin shall be intended to continue until the contrary be shewed. It was adjoined.

#### Pasch. 28 Eliz. In the Exchequet.

#### CCCLXXX. Caries Cafe.

In Information in the Exchequer, by the Ducen against Cary, the Tithes.

Case was this; A man grants stum Rectorize cum decimis eidem pertiment. More Rep. 224.

nent. Habend, strum predict, cum suis pertinentiis, for twenty years, the first Gantee vieth withfin the Term. If now because the Tithes are not Olantee vieth within the Term. If now because the Tithes are not expessed named in the Habendum, the Stantee shall have them so life only, was the Question. It was moved by Popham Attorney General, That the Stantee had the Tithes but so life, and to that purpose he cited a Tale adjudged 6 Eliz. In the Common Pleas: A man grants black Acre and white Acre, Habendum black Acre so life, nothing of white Acre shall pass but at will; and in the argument of that case, Anthony Browne put this case; Aucen Mary granted so Rochester such several Offices, and shewed them specially, Habendum two of them, and shewed which in certain, so softy years. It was adjudged that the two Offices which were not mentioned in the Habendum, were to Rochester but so life, and determined by his death; And so he said in this Tale, The Tithes not mentioned in the

the Habendum hall be to the Stantee for life, and then he dying, his Executors taking the Cithes are Intrudors: But as to that, It was faid by Manwood chief Baron. That the cales are not alike; for the Stants in the cales cited are several, intire, and distinct things, which do not beyond the one upon the other, but are in goods by themselves. But in our Cales, The Tithes are parcel of the Rectory and therefore for the nearness between them, in the Rectory and the Cithes, the Cithes upon the matter pass together with the ment the Rectory for the term of twenty years, and Judyment was afterwards given accordingly.

Pafch.26 Eliz. In the Common Pleas, Mich.27 & 28 Rot.2432.

CCCLXXXI. The Lord Darcy and Sharpes Cafe.

Debt.

A Bond against Sharpe, who pleaded that the Condition of the Bond was, Chat if the laid Sharpe did perform all the Covenants, eccontained within a pair of Indentures, ec. By which Indentures the said John Lord Darcy had sold to the said Sharpe certain Crees growing, ec. and by the same Indentures Sharpe had covenanted to cut down the said Crees before the seventh of August, 1684, and shewed surther, That after the sealing and delivery of the said Indenture, the said Lord Darcy now Plaintiss, caused and procured I. S. to taze the Indenture, and so the said Indenture become void: And the opinion of the whole Court was clear against the Defendant, so the razure is in a place not material, and also the razure trencheth to the advantage of the Defendant himself who pleads it; and if the Indenture had become wood by the razure, the Obligation had been single and without Defendance.

Razure of Deeds. 11 Co. 27.

## Pasch. 28 Eliz. In the Common Pleas.

# CCCLXXXII. Rollston and Chambers Case.

Costs where Damages are given. 2 Len. 52. Rollston brought an Action of Crespass upon the Statute of 8H.6. of forcible Entry against Chambers, and upon Assue joyned it was tound for the Plaintist, and Damages assessed by the Jury, and coss of suitalso, and costs also de incremento were adjudged; And all were trebled in the Judgment with this purclose, quæ quiden dama in toto se attingunt ad,&c. and all by the name of Damages. It was objected against this Judgment, that where damages are trebled, no costs shall be siven, as in Wass, ac. But it was clearly agreed by the whole Court, Chat not only the costs assessed by the Jury, but also those which were adjudged de incremento should be trebled, and so were all the Presidents, as was affirmed by all the Prothonotaries, and so are many Books, 19 \$1.6.32.14 H.6.13.22 H.6.57. 12 E.41. And Book of Entries 334 and Judgiment was given accordingly. And in this case it was agreed by all the Assisted for the same force at the suit of the party should be sined, norwithstanding that he was sined before upon Indiatment so, the same force.

## Hill.29 Eliz. In the Common Pleas. Intrat. Trin. 27 Eliz. Rot. 1606.

CCCLXXXIII. Jennor and Hardies Cafe.

be Cafe was, Lands were deviled to one Edich for life, upon condition that the should not marry, and if the died, or married, Deviles. Mue of his body in the life of Edich, that then the Land should remain to the faid Edich, to dispose thereof at her pleasure: And if the said A. wid survive the said Edich, that then the Lands should be divided betwirt the Sisters of the Devisor, A. died without Islae living Edich. Shutleworth Setjeant; Edich hath but for life; and yet he granted, Chat if Lands be devised to one to dispose at his will and pleasure without more saying, Chat the Devisee hath a Fee-simple; but otherwise it is when those words are qualified and restrained by special Limitation: ds 15 H.7.12. A man deviceth, that A. chall have his Lands in perpetum during his life, he hath but an effact for life, for the words (During his Shepherds Touch-stone Lands to another for life, to dispose at his will and pleasure, he hath 439. but an estate for life; And these words, (If A. dieth wishout liste in the life that an eleate to lite: And there wolos, (If A. dieth wishout line in the life of Edith, That then the Lands should remain to Edith to dispose at her pleasure) shall not be construed to give to Edith a Fee-limple, but to vischarge the particular estate of the danger, penalty, and loss, which after might come by her marriage, so as now it is in her liberty. And also be sate, Edith, Ehat by the Limitation of the latter Remainder, i. That the Lands should be divided betwirt the Daughters of his Sister, the meaning of the Devisor was not, that Edith should have a Fee-limple, for the Remainder is not limited to her Devisor, ac. if A. dieth in the life of the sain Edith; for the Devisor greeth surther. That if A. overlife of the faid Edich; for the Devilor goeth further, That if A overlives Edich, and afterwards dieth without Islue, that the said Land though be divided, ac. Walmelley contrary: And he relyed much upon the words of the Limitation of the Remainder to Edith, Quod integra remaneat dicta Editha, and that the might dispose thereof at her pleasure, for Ante 1561 the faid division is limited to be upon a Contingent, i. if A. survive Edich, but if Edich survive A.then his intent is not that the Lands should be divided, ac. but that they shall wholly remain to Edich, which was granted by the whole Court, and the Justices did rely much upon the lame reasons and they were very clear of opinion, That by those words Edith had a fee-simple: And Judgment was given accordingly. Anderson conceived, That it was a Condition; but although that it be a Condition, to as it may be doubted, if a Remainder might be limited upon a Condition, yet this devile is as good as a new devile in Reverupon a Condition, yet this device is as good as a new device in Neverfion upon the precedent Condition, and not as a Remainder, quod
Windham concessi; but Periam was very strong of opinion, That it is a
Limitation. Two Joyntenants of a Term, A. and B. A. grants his
part to B. nothing passeth by it, for (as a Grant) it cannot be good; for Oven 102.
as one Joyntenant cannot enseon his Companion, no more can he i Cro314best any thing in him by grant, for he cannot grant to him a thing i last. 186.
which he hath before; for Joyntenants are seised and possessed of the
whole, all which was granted per Curiam; and Anderson said, That if
Lands he granted to Anna B. and the species of A. B. connot surrender Lands be granted to Aand B. and the Beirs of A. B. cannot lucrender to Afoz a Surrender is as it were a grant; And as a Release it cannot enure, for a Release of a Right in Chattels cannot be without a Deed.

### Hill, 20 Eliz. In the Common Pleas.

### CCCLXXXIV. Hollingshed and Kings Case.

Debt.

Hollingshed brought Debt against King, and declared, That King was bounden to him in a Accognizance of two hundred pounds betoze the Mayor and Albermen of London, in interiori Camera de Guildhall London, upon which Accognizance the faid Hollingshed heretofoze brought a Scire facias befoze the faid Mayoz, &c. in exteriori Camera, and there had Judgment to recover, upon which Recovery he hath brought this action; and upon this Declaration the Defendant did demur in Law, because that in setting forth of the Recognizance be hath not alledged, That the Mayor of London hath Authority by Prescription or Grant to take Recognizances, and if he hath not, then is the Aecognizance taken Coram non Judice, and so void: And as to the Statute of West. 2. cap. 45. It cannot be taken to extend to necognizances taken in London, which fee by the words, De his que recordat. funt coram Cancellario Domini Regis & ejus Justiciariis qui Recordum habent, & in Rotulis eorum Irrotulatur, &c. And gis & ejus Julticiaris qui Recordum habent, & in Rotulis eorum Irrotulatur,&c. And also at the time of the making of that Statute, London had not any Sheriffs, but Bayliffs; and the said Statute ozdains, that Poccess shall go to Sheriffs, ac. But the whole Court was clear of a contrary opinion, for they said, the will know that those of London have a Court of Record, and every Court of Aecozd hath an Authority incident to it to take Aecognizances, for all things which concern the Jurisdiction of the faid Court, and which arife by reason of matters there depend of the laid Court, and which arms opted of that the Recognizance was taken in interiori Camera, but the Court was holden in exteriori Camera, and therefore not purfuant. But as to that, it was faid by the Lord Anderfon, That admit that the Aecognizance was not well taken, yet because that in the Scire facias upon it, the Defendant did not take advantage then thereof, he shall be bounden by his said admittance of it, as it one sue forth a Scire facias, as upon a Recognizance, whereas in truth there is not any Recognizance, and the party pleads admitting truth there is not any Recognizance, and the party pleads admitting such Record, and thereupon Juogment is given against him, it is not boid, but voidable. Fleetwood, Aecozder of London, alledged many Cases, to prove that the Courts of the King are bounden to take notice, That they of London have a Court of Aecozd, for if a Quo warranto issueth to Justices in Eyre, it behoves not them of London to claim their Liberties, for all Courts of the King are to take notice of them. And at last, after many motions, the opinion of the Court was for the Plaintist. And it was fast by Anderson, and in manner agreed by the whole Court, That if depending this Demurrer here, the Judgment in London upon the Scire facias be reverted, yet the Court here must pro-

Priviledges of London

Hill. 29 Eliz. In the Common Pleas.

ceed, and not take notice of the faid Reverfal.

CCCLXXXV. Bedingfeild and Bedingfeilds Case.

Dower.

Diver was brought by Anne Bedingfeild against Thomas Bedingfeild. The Tenant out of the Chancery purchased a Artit, De circum-ipecte agais, setting forth this matter. That it was found by Office in the Tounty of Norfolk, that the busband of the Demandant was seised of the Manor of N. in the said County, and held the same of

the Queen by knights Service in chief, and thereof dyed feised, the Tenant being his Son and Peir of full age, by reason whereof the Queen seised as well the said Panoz as other Manozs, and because the Queen was to reflore the Cenements, tamintegre, &c. as they came to her Primer feilin. hands, it was commanded the Judges to lucceale, Domina regina inconsula: It was resolved, per Curiam, That although the Queen be entituled to have Primer feisin of all the Lands, whereof the bushand of the Demandant dyed seised, yet this talk it do not extend unto any Hanozs not found in the Office, for by the Law, the Queen cannot seise more Lands than those which are contained in the Office: And therefore as to the Land not found by the Office, the Court gave day to the Cenant to plead in chief: And it was argued by Serjeant Gawdy for the Cenant, plead in chief: And it was argued by Serjeant Gawdy for the Cenant, That the Demandant ought to five in the Chancery, because that the Queen is entituled to have her Primer Seisin, and cited the case of 11 R.2. and 11 H.4.193. And after many motions, It was clearly agreed by the Court, That the Cenant ought to answer over, for the Statute, De Bigamis Cap. 3. Provides that in such case, The Justices shall proceed notwith standing such seisin the king, and where the king grants the custody of the Cenant himself, 1 H.7.18,19.4 H.7.1. A Multo fortiori against the Bett himself where he is of full age, notwithstanding the possession of the king for his Primer seisint By the Statute of Bigamis after the Beit was of full are, the Alise could not be endowed in the Chancery: But now full age, the Mife could not be endowed in the Chancery: But now by the Prerogative of the King, such wives may be endowed there, Si vidux illx volucrint, and after many motions, The Court awarded, Chat the Tenant hould plead in chief at his peril, for the Demandant might fue at the common Law if the pleased.

CCCLXXXVI. Hill. 28 Eliz. In the Common Pleas.

The Case was, The husband was seised of Lands in the right of exchange, his Misthe husband and his Mise both joyned in erchange of the Lands with a stranger for other Lands, which erchange was executed, the Husband and the Mise seised of the Lands taken in erchange, aliened the same by fine, It was holden by Rhodes and Windham Justices, That the Mise after the death of her husband might enter into her own Lands notwithstanding that fine; And Rhodes resembled it to the case reported by my Lord Dyer, 19 Eliz. 358. The Husband after marriage assured to his Wise a Toynture, they both leng a fine, Sur Conusans de droit come ceo que il ad of the gift of the Husband; that the same is not any Barto the Wise of her Dower, so, the Election is not given to the Misse to claim her Joynture, or her Dower, until after the Death of her Husband; And so in the principal case Judgment was given so the Allise. given for the Claife.

Pasch. 26. Eliz. In the Kings Bench.

### CCCLXXXVII. Le es Case.

Nicholas Lee by his will devited his Lands to William his tecture Soils Derne:
And if he depart this Aldord not having iffue; Then I will that i co.26,
my Sons in Law thall fell my Lands, the Devitor at the time of his; Lenio6.
devite having fir Sons in Law, dyed, William had Iffue John, and
dyed, John dyed without Iffue, one of the Sons in Law of the Debilor dyed, the five furnitying Sons in Law fold the Lands: first
than elevely refolked by the inhole Court. That although the words of Ticholas Lee by his will deviled his Lands to William his fecond Sons Deviles it was clearly resolved by the whole Court, That although the woeds of

the Aill are (ut supra) If William my Son bepart this world not having Islue, &c. And that William had Islue who doed without Islue; here, although it cannot be litterally said, That William bid depart this Colord not having issue, yet the intent of the Devisor is not to be restrained to the letter, that such construction shall be made, That whensoever William doeth, in Law, or upon the matter without Issue, that the Land shall be subject to sale, according to the authority committed by the Devisor to his Sons in Law: And now upon the matter William is dead without Issue. Is in a Formedon in Reverter or Formainder, although without Issee as in a Formedon in Reverter of Armainder, although that the Donee in tail hath issue, yet if after the estate tail be spent, the Wilt shall suppose that the Donee dyed, without Issee, a forcion in the Cale of a Will, of Devile, such construction shall be made. As the other point, concerning the sale of the Lands, Wray asked, If the Sons in Law were named in the Will, and the Clerks answered, the See 30 H.8. Br. Devise, 31. and 39 Aff. 17. Executors, 117. such a fale god in case of Executors: See also 23 Eliz. Dyer, 371. and Dyer 4, & 5. Phil. and Mary, Lands devised in tail, and if the Devisee shall dre without Asue, that then the Land shall be sold, pro optimo valore, by his Executors, una cumastant hards and constant fenfu A.if A.hyeth before fale, the power of the Executors is determined: And afterwards it was clearly refolved by the whole Court. Chat the tale for the manner was good, and Judgment was given accordingly.

Pasch. 20 Eliz. In the Kings Bench.

CCCLXXXVIII. Sir Gilbert Gerrard and Sherringtons

SIt Gilbert Gerrard Master of the Kolls, Libelled in the Spiritual Court, against Sherrington, and A.his Servant for Cithes parcel of a Kectory, whereof the said Sir Gilbert was Fermor to the Queen; It was moved by Egerton Solicitor General, Chat against the Kings Ferman was moved by Egerton Solicitor Seneral. That against the Kings fermor a Prohibition both not lye: But the opinion of the whole Court was, That a Prohibition both lye, and so it hath been adjudged before. And afterwards, Exception was taken to the surmile, because the laid Owen Rep. 13. Sit Gilbert had Libelled against the said Sherrington and his Servant server. Rep. 128. becally, and now in the Kings Bench they both had made a joynt surmise, whereas they ought to have severed in their surmises according to the several Libels: And it was so adjudged by the Court, and therefore they were driven to make several surmises: And afterwards Exception may taken because the said Sherringson and his Sections had been also as the said Sherringson and his Sections had been also seen that he was set to said sherringson and his Sections had been because the said Sherringson and his Sections had been because the said Sherringson and his Sections had been adjudged by the Court had become fore they were driven to make several surmises: And afterwards Exception was taken, because the said Sherrington and his Servant, had be livered their surmises and suggestions by Attorney, where they ought to be in proper person: See the Statute of 2 E. 6. cap. 13. The party shall bring and beliver to the hands of some of the Justices of the same Court, &c. the true Copy of the Livel, &c. subscribed or marked with the hand of the Party, &c. and under the Copy shall be written the surmise or suggestion; and although it was assumed by the Clerks of the Court, that the common use and practice for twenty years had been, not to exhibit such surmises or suggestions by Attorney: Pet it was resolved by the whole Court, that it ought to be by Attorney.

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denture in this cale

# Pafch. 26. Eliz. In the Kings Bench.

## COCLXXXIX. Short and Shorts Cafe 32001, and 1106

I Dan Action swon the Cale upon Auswolft to hap many to the Request. Plaintist upon Request: It was agreed. Hat the Plaintist up way of Declaration ought to allenge an actual Request and at what place, and at what place, and at what her the Request was made: And it is not difficient to lap. as in an Action of Debt, Licet sexpus requisitus, &c. and so it was adjunged.

### CCCXC. Pasch. 26. Eliz. In the Kings Bench.

O'le was Endicted in the Countrof Linctipon the Statutes of West. Indictment of Cap. 23. and 2 R. 2. Cap. 5. as News, and the mosal were, Chat Cam- upon the Station was not executed for treasion, but for Religion, and that he man as twee of news, bones a man as Crapmer; the Bill was endorsed, Bills vera, but indether, is the verba prolata sucrum, maliciose, sediciose, or ecour. ignoraque: The latte Indictment being removed into the kings Bench, the party, sor the causes asoresaid, was discharged.

Pasch. 26. Eliz. In the Kings Bench.

### OCCXCI. Cole and Friendships Cafe.

In Ejectione firms, the Cafe was, Chat Fricarrock was defled, and by In- Leafes.

I denture betwirt himleffof the one part, and one Friendship, his Mife 4 Len. 64.

and the Children betwirt them begotten at the Affigument of the Gussband of the other part, leafed the fairl Land to the Law Husband, for years, they having at the time of the fair Leafe but one Children, for years, they having at the time of the fair Leafe but one Children, Sons after- Affigument, wards they had many Children, the wife direct the Gusband by his will affigured his fecome Son box after the making of the Leafe, to have the refinite of the Leafe, to have the relidue of the laid Termiand by the opinion of the Court nothing can refidue of the laid Termiand by the opinion of the Court nothing can come to the laid Son by that Leale, or by that affignment, for if the Interest doth not best at the beginning, it aball never best; And afterwards is was moved. In as much as nothing could best in any of the Children born after the Leale made, if these words (At the Asignment of the Husband) should be boid; and then the case should be no more, but that Land is debised to the Father and Bother, and their Children: At another day, viz Trin. 26 Elizathe case made moved again, amount of first Point, the Court was of opinion as before, That the Child assigned after the Lease made, should not take: And then it was moved, That because Friendship and his takes at the time of the making of the laid Lease had one Son, that he should take with his Father and Bother; and that the words (at the Asignment of Friendship) should be boid, is matter of surplulage; and the word Children a good name of Bother; and that the words (at the Angnment of Friendship) thouse he both, is matter of surplulage; and the word Children a good name of purchase: But the whole Court was against that conceit, so, these words in the case, at the Assignment of Friendship are not void, but shew what person should take; if the intent of the party should take effect, I he who the Father by Assignment should enable, for no Child shall take but he who the Father shall assign, that is part of the contract; and although by such Assignment no title accrues to the Child assignts, pet without Assignment no Child is capable, for by the Lease the Father hath such Liberty that he may assign what Child he will: And by

Antea 275.

by Wray, If the words of the Leale had been at the affigument of the father within one month) and the Father furcease his month, the Interest should not vest in any of the Children; And by Aylist Justice, If the words of the Lease had been (to the busband and wife and their Son John, where his name is William) nothing should vest: And peradventure in this case at the Bar, if the Father had assigned his Son then boun, and had assigned him before or at the time of the Lease, it the deliberry of the Lease, it had been well enough: Note that this action who brought by Cole Lesse of the Son of the pushand and Assistant the time of the Lease made: And afterwards Wray, with the assent of all the rest of the Justices, gade Judgment that the Patients while capiat per Billam.

### COCXCII. Pafeh. 26 Eliz. In the Kings Bench.

Execution where joynt, where feveral.

Dte, It was agreed by the whole Court and affirmed by the Cierus:

That if Dibt be brought upon an Obligation against two upon a sopret Precipe, and the Plaintist hath judgment to recover, that a soynt Execution ought to be sued against them both: But if the suit were by one Original and several Precipes, execution might be sued against any of them.

## CCCXCIII. Trin. 26 Eliz. In the Kings Bench.

Replevin.

IN a Replevin, The Defendant both abow for Damage Fealant, and thewed that the Lady Jermingham was seised of such a Hannor where of, scand leased the same to the Defendant for years, &c. The Plaintiff said, That long befor king H.8. was seised of the said Hannor demiced and that the place where is parcel of the said Manor demissed and demissed by copy, &c. and the said king by his Steward demissed and granted the said parcel to the Ancestor of the Plaintiff whose beit beis, by copy in see, &c. upon which it was demurred, because by this Bar to the Anowry, the Lease set forth in the Anowry is not answered, so the Plaintiff in the Bar to the Anowry, ourbt to have concluded, and so was seised by the custom, until the Anoward, pretextu of the said Term sor years entred; And so it was adjudged.

Trin. 26. Eliz. In the Kings Bench.

COCXCIV. The Lord Dacres Cafe.

Ante 227. Stewardship of a Manor: Office of Trust. Grants per Copy, Deputy Steward.

IN Ejectione firme, the case was, That the Lozd Dacres was seised of the aspanoz of Eversham, and that Ls. held the place where of the said Mainoz by copy for term of his life, and the said Lord granted the Stewardship of the said Manoz to the now Marquets of Winchester, who appointed one Chedle to be his Deputy to keep a court, & ad tradendum, the said Lands (Ls. being now dead) to one Wilkins by copy for life, afterwards, the said Chedle commanded one Hardy his Servant to keep the said court, and grant the said Land by copy, ut supra, which was done accordingly, the copy was entred, and the Lozd Dacres subsigned it a construent: It was turther sound, That Hardy had many times kept the said court both besoze and after, and that the enson of the Manoz was, that the Steward of the said Manoz so the time being, or his Deputy might take Surrenders, and grant estates by copy: And if this estate so granted by Hardy were good or not, was the quession, because by the Servant of the Deputy, whereas the custom sound did not extend

1 C 0.48.49 .-

tend further than the Deputy: It was argued that the estate granted, or supra, was both, so a Deputy cannot transfer his authority over, so it is an office of trust: See 39 H.6.33,34-14 E.4.1 and 6 Eliz. It was adjudged, Chat the Duke of Somerset had divers Stewards of his Lands, and they, in the name of the said Duke made diverse Leases of the Lands of the said Duke, rendring Rent, and the Duke, afterwards assented to the said Leases, and received the Kents reserved upon them, and yet after the death of the said Duke, the Earl of Herrsord his Son and Deir abothed them: So here, the assent, and the subsignment of the copy by the Lord Dacres, doth not give any strength to the copy which was vold at the beginning; against which it was said. That to take a Surrender, and to grant an Estate by copy is not any judicial sar, but meerigan sar of service, and no matter of trust is transferred to Hardy, so trust is reposed in him who may deceive, which can't be in our Cale, so, here is an express tomm and ment, which if Hardy transgers it is absolute void, for nothing is lest to his discretion: And the admitting of a Copy-holder is not any judicial sar, so there need not be any of the Suitors there who are the Iudges: And such a Court may be holden out of the Hole of the Spanor, so pleas are holden, which was concessim per town Ourism: And hy his Judice, At the Lord of such a spanor makes a feosiment of a parcel of his Spanor which is holden by copy for site, and afterwards the Copy-holder does here, which has concessim per town Court, yet the Feosies may grant over the Land by copy again. And the whole Court was clear of opinion, 'Char the grant so,' the manner of it was good, especially because the Lord Dacres agreed to it; and Judgment was given accopyingly.

Trin. 26. Eliz. In the Kings Bench.

OCCXCV. Burgeffe and Fosters Cafe.

In Ejectione firmize, the case was, That the Dean and Chapter of Ely i Craiting were seised of the agamon of Sutton, whereofthe place where, seels parteel, demised and demisable by copy according to the custom and by their Deed granted the Stewardship of the said Mano; to one Adams to crecute the said office, per se vel legitimum sum Deputatum eis acceptabilem: After surrendari, was made a Letter of Deputation to one Mariot, ad capicidum unum sursum reddicionem of one I. W. and I. his Colife, and to examine the said lastocessis, ea intentione, that the said I. W. and A. might take back an estate so; their lives, the Kemainder over to one John Buck in Fee (Note, the Surrenders count to said a duodus Messagis) Mariot took two several Surrenders from the said bushand and Colife, the Remainder over to the said John Buck in Fee, upon condition to pay a certain sum of money, &c. It was moved, Chat the Surrenders is boid, and without warrant, so; the warrant was, ad capiendum unum sursum reddicionem, and here are two several Surrenders, and so the warrant is not pursued, and then the Surrenders, and so the Deputation was absolute and without Condition, and now in the Erecution of tight is conditional, so as this conditional estate is not warranted by the Deputation: But the whole Court was clear of a contrary opinion in both the points, and that all the proceedings were sufficient and well warranted by the Deputation: another matter was objected, because that this Surrender and regions force sufficient and well warranted by the Deputation is suntender and regions is entred in the soil of a Court, dated to be holden the second of Maij, and the Letter of Deputation bears date the third of June after: But as to that, Checourt was clear of opinion, that the misentry.

of the date of the Court hould not prejudice the party-for this Entry is not matter of Record, but is but an Escape, and if the parties had been at Issue, upon the time of the Surrender made, or of the Court holden, the same should not be tryed by the Rolls of the Manor, but by the Country, and the party might give in Evidence the truth of the matter, and should not be bound by the Koll, and according to this secondition of the Court, Judgment was given.

COCXCVI. Mich. 26, & 27. Eliz. In the Kings Bench.

Fines levied.

Scine facias.

Leveda fine to Lee and Loveday, Sur Conusans de droit come ceo, &c. with a Render to him and his heirs in fee; And upon a Scire sacias against the Conuses, supposing the Lands to be ancient Demesn, the Defendants made default for which the Fine was avoided, and now the June in tail entred upon the Lesse to years, and he brought an Ejectione frame, and it was found. That the Land was frank fee; And all the question was, If by the Reversal of the fine by Willit of Discett, without sing forth a Scire sacias against the Conuse, and not against him, or should be void only against the Conuse, and not against which him, or should be void only against the Conuses, and not against the Lesse? Arkin, It shall not bind the Lesse to years: for a fine may bind in part, and in part not: as bind one of the Conuses, and not the other, 7 Hallia fine levied of Lands, part ancient Demess, and part at the common Law, the same was by Will of Discett reverted in part, as to the Land in ancient Demess, and flood in soccess the residue, 8 Halis. And there by award of the Court issue forth a Scire sacias against the Ter-Cenants, and the Lustices would not admit the fine, without a certificate that the Land was Ancient Demess, notwithstanding that the Defendant had acknowledged it to be so, but as to them who were parties to the fine, the fine is become bosh as to the said parties, and and he who had the Land before might enter, and he said parties, and and he who had the Land before might enter, and he said it should be a great inconvenience, if no Scire facias, or other Proces should be awarded against the Textenant, so he so the Might plead matter of discourge, in Bar of the Allis and Discett, as a seleate, &c. which see Fire. N. B. 98. And so although the fine be reversed by the parties and leading the Land, and he resembled this case to the case of 2 H. 4. 16,17. In a Contra sormal collations against an Abbot, a Scire facias shall stille sort against the Lesses, with the Fine should be avoided against the parties, but not against th

COCXCVII. Mich. 26, 327. Eliz. In the Kings Bench.

Error.
Appearance
by Attorney.
Dyer 135.b.

Amais It was assigned for Error, that the Tenant did appear by Attorney, whereas he ought not but in person, because he is to do an Acin proper person, if it he not in case of necessity, where the Attorney may be received by the Kings Witt, or plead matter in Bar of the Attornement, as if he claim fee, &c. or other peremptory matter, after which Plea pleaded he may make Attorney, 48 E 3. 24. 7 H. 6.69. W. E. 3. 48. 1 H. 7. 27. Another Error was, because it is not shewed in the Quid juris clamat, what estate the Tenant hath: Another matter was, If the Handeled of the estate of Tenant in tall after possibility of issue extinct shall be diven to attorn, and it was said

I en . c.

min he fould not, for the priviledge both paiswith the gennt: see 43 E.3.1. Cenant in tail after possibility of issue extinct shall not be driven to attorn,46 E.3.13.27. Ergo, neither his Grantee: Williams contrary, As to the appearance of the Cenant by Attorney, because the same is admitwo by the Court, and the Plaintiff, the same is not Erroz, which see 1 H.7.27 by Brian and Conisby, 32 H.6.22. And he fald, That the Grantee bould be driven to attorn, for no other person can have the estate of the Tenant in tail after possibility of issue extinct, but the party himself, therefore not the priviledge; and although he himself be dispunishable of Was, pet his Grantee hall not have such priviledge. As if Tenant in Dower, or by the curtefle, grant over their estates, the beir shall have Wash against the Grantors for Wash done by the Grantee, but if the heir granteth over his Reversion, then Wast thall be brought against the Grantees: See Firz. N.B. 56. And it two Coparceners be, and the one taketh a Dusband and dieth the Dusband being Cenant by the curtefie, a Writ of Partition lyeth against him, but if he granteth over his estate, no But of Partition leth against the Grantee, 27 H.6. Stathams Aid. Ce If the Grantee nant in tail after possibility of issue extinct shall not have Aid, but his of Tenant at Grantee shall have Aid. Clark, The Ozantee of Cenant in tail shall ter possibility not be defined to attorn. If Cenant in tail grant totum statum suum, the shall actum. Grantee is dispunishaple of wast; so if his Ozantee grant it over his Giantee is also dispunishable, &c. It was adjorned.

Mich 26, 6 27. Eliz. In the Kings Bench.

CCCXVIII. Gravenor and Masseys Cale.

Ravenor brought a Whit of Error upon a common Recovery a Error. Trainf Maffey: and in the faid Recovery four pusbands and their adives were vouched, and now the Plaintiff brought this alit of Errozas heir to one of the Dusbands, and Exception was taken to his whit, because the Plaintist both not make himself heir to the Survivoz of the four husband. Egerton, The Whit is good enough, fur there is a difference betwirt a Covenant personal, and a Covenant real, for if two bebound to warranty, and the one dyeth, the Survivoz and the heir of the other hall be vouched, and be faid each of the four and their heirs are charged, and then the beir of each of them being chargeable, the heir of any of them may have a Whit of Erroz. And afterwards the Mut of Erroz was adjudged good: And Erroz was affigued because Ante 86: the Couchees appeared the same day that they were vouched by Attozney, which they ought not to bo by Law, but they might appear gratis the hill day without Proces in their proper perions, and to at the sequatur fub fuo periculo: Sce 13 E.3. Attorn, 74. and 8 E. 2. ib. 101. another Erroz was affigued. Because the Entry of the warrant of Attorney for one of the Coucheesis polo. wo, I.D. against the Cenant, where it should be against the Demandant, for prefently when the Clouchee entreth into the wars ranty, be is Tenant in Law to the Demandant : Coke, As to the first Erroz, Although he cannot appear by Attorney, yet when the Court hath admitted his appearance by Attorney, the laine is well enough, and is not Erroz: As to the other Erroz, I confels it to be Erroz, but we hope that the Court will have great confideration of this cale as to that Erroz, for there are one hundred Recoveries errontous in this point, if it may be called an Erroz: And then we hope, to a void fuch a general mischief, that the Court will confider and dispense with the rigozof the Law: As their Predecessors did, 39 H.6.30. In the Writ of Belie: But I conceive, That the Writ of Erroz is not well hought, for the Cloucher in the said Recovery is of four pusbands and their Calives, and when Cloucher shall be intended to be in

the right of their Aives, which see 20 H.7.1.b.46 E3.28.29 E3.49. And so by common intendment, the Aoucher thall be construed in respect of the Wise; So also the Plaintiss bere ought to entitle himself to this that of Erroz as heir to the Wise: And soz this cause, The Plaintiss relinquished his Auxit of Erroz; And afterwards he brought a new Allicit, and entituled himself as heir to the wise.

Mich. 26 & 27 Eliz. In the Kings Bench.

CCCXCIX. The Queen, and the Dean of Christchurch Case.

Præmunire.
3 Len.139.

The Queens Attorney General brought and profecuted a Præminire for the Queen and Parret, against Doctor Marthew Dean of Christ-church in Oxford, and others, because they did procure the satd Parretto be sued in the City of Oxford, before the Commissary there in an Action of Trespals, by Libel according to the Ecclesiastical Law, in which suit Parret pleaded, son Franktenement, and so to the Jurisdiction of the Court, and yet they did proceed, and Parret was condemned and imprisoned: And after that suit depended, The Queens Attorney withdrew the suit for the Queens and it was moved, Is notwithstanding that the party grieved might proceed: See 7 E.4. 2. b. The King shall have Præmuire, and the party grieved his Action: See Br. Præmuire 13. And by Brook none can have Præmuire but the King: Coke, There is a Presidentin the Bok of Entries 427. In a Præmunire, the words are sat east expondendum tam Domino Regi, quam R.F.) and that upon the Statute of 16 R.2. and 428, 429. Ad respondendum tam Domino Regi de contemptu, quam dict. A. B. de damnis: But it was holden by the whole Court, That if the Kings Attorney will not surther prosecute, the party grieved cannot maintain this suit, for the principal matter in the Præmuire is, The conduction and the damages are but accessary, and then the principal being released, the damages are but accessary, and then the principal being released, the damages are sone: And also it was holden by the Court, Chat the Premise are not to be regarded, and there is not any Judgment upon any of the pleadings there, but are good directions so pleadings, and not otherwise.

CCCC. Mich. 26, 5 27. Eliz. In the Kings Bench.

Fines levied.

Ferfeiture.

The Case was, A. gave Lands in tail to B.upon condition. That if the Donee of any of his heirs alien, of discontinue, &c. the Land of any part of it, that then the Donof do re-enter: The Donee hath issue two Daughters and dieth: One of the two Daughters le vieth a fine, Sur Conusans de droit come ceo, to her Sister: Heale Serjeant, the Donof may enter, for although the Sisters to many intents are but one beit, yet in truth they are leveral heirs, and each of them shall sue Livery, 17 E.3. If one of the Sisters be discharged by the Lord, the Lord shall lose the Clardship of her, and yet the heir is not discharged: And if every Sister be heir to diverte respects, then the Fine by the one Sister is a cause of Forseiture: Harris contrary, For conditions which go in defeating of estates shall be taken shortly, and here both the Sisters are one heir, and therefore the discontinuance by the one, is not the Ac of the other: Clench Justice, The words are, Or any of his heirs, therefore it is a sorseiture, quod sur concession per totam Curiam: And Judgment was given accordingly.

Conditions.

### CCCCI. Mich. 26 & 27 Eliz. In the Kings Bench.

The Case was, a Moman seised of a Rent-charge for life took bus Assumption. I band, the Kent was arrear; the wife died, the Cenant of the Mutr.Rep. 34. Land charged, promised to pay the Rent in consideration that the Hob. 284. Kent was behind, ac, and some were of opinion. Because that this kent is due and payable by a Deed, that this action of the Case upon Assumptic will not tye, no more than if the Obligary will promise to the Obligee to pay the mony due by the Obligation, an Action both not tye is Cro. 5. upon the Promise, but upon the Obligation. But it was holden by the whole Court, Chat the Action did well the, soft here the Quisband had remedy by the Statute of 32 H.8. And then the consideration is sufficient, and so Judgment was given soft the Plaintiss.

### Hill. 27 Eliz. In the Kings Bench.

#### CCCCII. Williams and Blowers Cafe.

by erronious Judgment; Cestuy que wse dieth, his Whit of Erroz is gone for if the Judgment be reversed he cannot be restozed to the Land, for the estate is determined, 31 E. 3. Incumbent 6. The King brought a Quare Impedit against the Incumbent and the Bishop, the Bishop claimed nothing but as Droinary: The Incumbent traversed the title of the King, against which it was replyed for the king, That the Incumbent had religned pendant the Carit, so as now he could not plead cumbent had religned pendant the Arit, lo as now he could not plead any thing against the title of the King, so he had not possession, and so could not counterplead the possession of the King. And here in our Case, by this deprivation the Ancumbent is disabled to maintain this Action of Discett, 15 Ass. If the Guardian of a Chappel he impleaded in a Precipe so the Lands of his Chappel, and pendant the Carit he resign, the Successo shall have a Carit of Erroz, and not he who resigns, so he is not to be restored to the Lands, having resigned his Chappel. So in our Case, A deprivation is as strong as a Resignation. The third Erroz, because in the Carit of Discett sught to contain all the Operial matter of the Tase, as an Action upon the to contain all the special matter of the Case, as an Action upon the Case, 4 E. 3. Discoit 45. The fourth Erroz, That upon suggestion made after Aerdict, that Blower was Incumbent, and in, of the presentment of the Lord Stafford, and that he was removed; and Griffin in by the Kecovery in the Quare Impedit by default, a Whit to the Bishop was awarded without any Scire facias against Griffin, for he is possessly, and so the Statute of 25 E3. calls him, and gives him authority to plead against the King, and every Aeleale of Confirmation made to him is good, 18 E. 3. Confirmation made by the King after Recovery against the Incumbent is good: And 9 H.7. If a Aecovery be had in a Contra formam collationis, the possesso shall not be oussed without a Scire facias, so in Audia Querela upon a Statute Staple, Scire facias thall go against the Affignee of the Conulee, 15 E.3. Respon. 1. See also 16 E. 3. Disceit 35. 21 Ass. 13. A fine levied of Lands in Ancient Demesn shall not be reversed without a Scire sacial against the Cer-tenant. Walmesley contrary, The case at the Bar dissers from the case put of the other live, so they are cases put upon oxiginal Mrits, but our case is upon a judicial Mrit, and here nothing is demanded, but the Defendant is only to answer to the disceit and falshood. And in this Case the Mue is contained in the Arit which is not in any oxiginal writ, and the Judges thall examine the issue without any plea ox appearance of the Cenant, and here the Defendant is not to plead any thing to excuse himself of the wrong: And here the Judgment is not to recover any thing in demand, but only to reffoze the party to his former effate and possession, and if he hath nothing, he shall be restozed to nothing; and he put many cales where perfous who have leveral Aights may joyn in one Acion, as a Recovery in an Asize against several Cenants, they may joyn in one Wirit of Erroz, 18 Asi Accovery in Asize against Disseitoz and Cenant, they shall both joyn in Erroz, why not also in Disseit? 19 E 3 Recovery against two Coparceners, the Survivoz and the heir of the other shall joyn in Erroz. As to the second Erroz, Williams and the Sheriff ought not to joyn in the Plea, and also the Plea it self is not god, for the Arit of Disceit is, Chat Williams answer to the Officeit, and the Sheriff shall certific the proceedings, and therefore he shall not plead: and also the Plea it self is not god, for although the interest of the Incumbent be determined in the Church, yet his action is not gone; as if in a Precipe quod reddat, the Tenant alseneth pendant the Mrst. and afterwards the Demandant recovereth, yet

pendant the Afrit, and afterwards the Demandant recovereth, yet the Tenant although his Interest be gone by the Feosiment, yet be shall have a Africal Erroz, and so bere; and as to the Scire facias, there needs none here against the new Incumbent, so he comes in pendeds

Deprivation.

€ Co.52.

Scine facias.

vant the Writ, and that appears by the Record; but if it had been in before the Writ brought, then a Scire facias would lye. See 9 H.6. It was adjorned.

Mich. 26 & 27 Eliz. In the Kings Bench.

#### CCCCIII. Flemmings Cafe.

Flemming was Indicted upon the Statute of i Eliz. because he had indicament given the Sacrament of Baptism in other form than is prescribed upon the Statute had Statute, and in the Book of Common Praper, and the tute of i Eliz. sat Indicament was before the Justices of Asize. Wray and Anderson, of such offence done before, and now he is Indicted again; for which it was awarded, that he luster Imprisonment for a year; and shall be adjudged ipso saco, deprived of all his Spiritual promotions: And upon the Indiament Flemming brought a Writ of Croz, and assigned Erroz, because in the second Indiament no mention is made of the sick Indiament, in which case the second Indiament doth not warrant such a Judgment. Wray Justice, If the sick Indiament be before us, then is a second Judgment well given; contrary, if it be before other Justices. Clench, The second Indiament ought to recite the sirst conviction; and if one be Indiated for a Aggue in the second degree, the first conviction ought to be contained in such Indiament; in an Indiament the day and time are not material as to true recovering Lemming was Indicted upon the Statute of i Eliz. because he had Indictment Indiament the day and time are not material as to true recovering in facto: And it might be, that this lass Indiament was for the first offence for any thing appeareth. Coke, who argued to the same intent, compared it to the Case of 2R 2.9 and 22 E4.12. 12 H.7.25. Indiament tertified to be taken coram A.B. Justiciariis Domini Regis ad pacem, &c. Without faying, nection ad diversas felonias, &c. is void, and if a man bath been once convicted, he shall not have his Clergy if it appeareth upon Ae' cord before the same Justices, that he had his Clergy before.

Hill. 27 Eliz. In the Kings Bench.

CCCCIV. The Mayor of Lynns Cafe.

be Dayof of Lynn was Indicted, for that he had received twenty indictments. four fhillings of one A. for giving of Judgment in an Action of Debt, depending befoze himagainst one Band he was indiced thereof as of Extortion, In contemptum diche Dominæ Reginæ, & contra formam Staand the Exception, in contemptum diete Domine Regine, & contra formam Statuti. Coke, The Indiament is indifficient, for there is not any Statute to punish any Judge for such a matter: for the Statute of West. 1.

Cap. 26. is made against Sherists, Cap. 27. Clerks of Justices, Cap. 30.

The Warthal and his Servants, Statute 23 H. 6. against Sherists, and other Statutes against Divinaries: But no Action lies against a Judge, for that which a Judge receives is Bribery and not Extortion, Er sais poince est, judici guod Deum habeat ultorem, and therefore he said the Barth indiated quick to be likeharged. Candy Institute. If in the Inparty indicted ought to be discharged. Gawdy Justice, If in the Indictent there be words of Extortion or Bribery, although such an offence in a Judge be not inaterially Extortion, if these words, contrapacem, &c. had been in the Indictment, it had been good, quod Clench concessive. And afterwards the party was discharged.

Mich. 28 & 29 Eliz. In the Kings Bench.

CCCCV. Crifp and Goldings Cafe.

Affumplit.
1 Croso.
2 Len. 71.

In an Action upon the Case by Crisp against Golding, the Case was That a feme sole was Cenant soy life, and made a Lease to the Plaintist soy sive years, to begin after the death of Cenant soy life; and afterwards the 18. of October made another Lease to the same Plaintist soy 21 years, to begin at Michaelmass next before; and declar ring upon all the fato matter, he fato, Virtute cujus dimifionis, i.e.the later Leafe, the Plaintiff entred and was poffeffed Craft. Feft. S.Mich. which was before the Leale made; and further declared, that inconsideration that the Plaintiff had assigned to the Defendant these two Leales, the Defendant promised, ec. and upon non Assumplie it was found for the Defendant promiled, &c. and upon non Adjumplit it was found to the Plaintiff againfi the Solicitor Seneral, who had taken divers exceptions to the Declaration, iMhere two ormany confiderations are put in the Declaration, although that some be both, yet if one be good the Action well lieth, and damages shall be taxed accordingly; and here the consideration that the Plaintiff should assign toum statum, titulum, & interesses show a good that the Lease in posterious was made after Michaelmas, i. 18 October, and the Declaration is, Lesing and divisionist the Defendant entress Crassing Michaelmas and the profession which sand then he Virtute cujus dimiffionis, the Defendant entred Crastino Mich. and then he Virtute cous diminions, the Detendant entred Cratino Mich. and then he was a diffeifor, and could not assign his interest and right, which was suspended in the toxtious disselsin, and so it appeared to the Judges; and he said there was not here any disselsin, although that the Lesse had entred before that the Lease was made; for there was an agreement and communication before of such purposed and intended Lease, although it was not as pet effected, and if there were any disselsin, and here it appeareth that the Lesse should enter, it cannot be any disselsin, and here it appeareth that the Lease had his commencement before the making of the Lease, and before the entry: But put case it be a disselsin, pet he assigned all the Interest quod ipse tunc habuit, according to the modes of the consideration, and he descrete hath the Indentures of words of the confideration, and he delivered both the Indentures of the late Demiles, and quacunque via data, be the aftignment good or boid it is not material as to the Action, for the confideration is good enough. Egerton Solicitor contrary. In every Action upon the Cale, upon Aftumphit, there ought to be a Confideration, promile, and breach of promile, and here in our Case the Consideration is the assignment of a Lease, which is to begin after the death of the Lesloz, who was but Tenant for life, which is meetly void, and that appeareth upon the Accord; and as to the second part of the Consideration, and the assignment of the fecond Leafe, it appeareth, that the Plaintiff at the time had but a Right; for by his untimely entry before the making of the Leale, he was not to be law Leslee, but was a wrong-voer, at. in 19 Eliz in the Kings Bench this difference was taken by the Justices there, and belivered openly by the Lord Chief Justice, i. When in an Action upon the fact was Assumed that the Conference of any or was are last in the December 19 to the Conference of any or was are last in the December 19 to the Conference of the C the Cale, upon Affumplit, two Confiderations of more are lato in the De claration, but they are not collateral, but purfuant, as A. is indebted to B. in 100 l. and Apromifeth to B. that in confideration that he oweth him 100 L and in confideration that B. hall give to A. 2 s. that he will pay to him the faid 100 L at such a day, if B. bying an Action upon the Case upon this Assumption, and declares upon these two promites, although the consideration of the 2 s. be not performed, yet the Action both well spe: But if they be collateral considerations, which are not pursuant, as if I in consideration that you are of my Counsel, and shall rive with me to York, promise to give to you 201. in this case all the considerations ought to be proved, otherwise the Action cannot be maintained : So in our case, the considerations are collateral, and therefore they ought to be proved; and afterwards Judgment was given for the Plaintiff.

Hill. 28 and 29 Eliz. In the Common Pleas.

CCCCVI. Fooly and Prestons Cafe.

In an action upon the Case the Plaintist declared, That whereas 1 Cro. 200.

John Gibbon was bound unto the Plaintist in quodam scripto obligatorio, 2 Len. 105.

tigilo suo sigillat. and coram, &c. recognito in forma Statuti Scopul. The Defendant in consideration that the Plaintist would belive to him the said Writing to tead over, promiled to deliver the same again to the Plaintist within six days after, or to pay to him 10001. in lieu thereof, upon which promise the Plaintist and beliver to the Defendant the said Writing; but the Defendant had not, nor would not deliver it back to the Plaintiff, to the great belay of the Execution thereof, and the Defendant did demur in Law upon the Declaration. It was objected, that here is no difficient confideration appearing in the Declaration upon which a promife might be grounded; but it was the opinion of the whole Court, that the confideration fet forth in the Declaration was good and lufficient; and by Anderson, it is usual and frequent in the Kings Bench: If I deliver to pon an Obligation to rebail unto me, I shall have an Action upon the Case without an express Affumplit; and afterwards Judgment was given for the Plaintiff.

Hill. 28 and 29 Eliz. In the Common Pleas.

CCCCVII. Wallpool and Kings Cafe.

William Wallpool was bound to King by Accognizance in the fum of Attachment is Wallpool according to the Custom of London, affirmed a Plaint of Debt in the Guildhall London against the said King, upon the said Bond of 1001. London.

Oebt in the Guildhall London against the said King, upon the said Bond of 1001. and attached the debt due by himself to Wallpool in his own hands, and now King flied Execution against the faid Wallpool upon the fato Recognizance, and Wallpool upon the matter of Attachment brought an Audita querela, and praped allowance of it; and by Gawdy Serjeant, such a wit was allowed in such case, 26 Eliz. Anderson at the first doubted of it; but at last the Court received the said Wit de bene esse, and granted a Supersedens in stay of the Execution, and a Scire facias against King; but ea lege, that Wallpool should find good and sufficient Sureties, that he would sue with effect, and if the matter be found against him, that he pay the Execution.

CCCCVIII. Hill. 28 and 29 Eliz. In the Common Pleas.

A Copy-holder with license of the Lord leased for years, and after Copyholder. wards surrended the Aeversian with the Rent, to the use of a Surrender. surrender, who is admitted accordingly. It was moved, if here need any 1 Roll, 294. Attonment, either to lettle the Nevernon, of to created Pivity; and i Roll. 294. Rhodes and Windham Justices were of opinion, that the lucrender and admittance are in the nature of an Incolment, and so amount to an Attonment, and so amount to an Attognment, og at least do supply the want of it.

### Mich. 28 Eliz. In the Common Pleas.

#### CCCCIX. Ruddall and Millers Case.

Devile.

In Trespass, the Case was this, William Ruddall Serjeant at Law, 18 H. 8. made a feofiment in fee to divers persons to the use of himself and his beirs, and 21 H. 8. declared his Will, by which he devised his Lands to Charles his younger Son, and to the heirs against of his body, the Remainder to John his eldest Son in fee, upon condition, Charles or any of his issue should discontinue or alsen, dition, Chatif Charles of any of his time mould bucontinue of alien, but only for to make a Joynture for their wives for the term of their lives, that then, &c. and died; The Statute of 27 H.S. came, Charles made a Leafe to the Defendants for their lives, according to the Statute of 33 H.S. And levied a Fine with Proclamation, Sur Conusans de droit come coo, &c. to the use of himself and his wife, and the heirs Males of their two hodies begotten, the Remainder to himself and the heirs Males of hisbody, the Remainder to the right heirs of the Devilor. John the eldes Son entred for the Condition broken upon the Defendants, who re-entred, upon which Resentry the Action was brought. Gawdy, Fleet. wood, and Shuttleworth Serjeants for the Plaintiffs: This Condition to restrain unlawful discontinuance is god, as a Condition to restrain Talass, or Felony. See 10 H.7.11.13 H.7.23. And before the Statute of Quia Emptores terrarum: If A.had enfeossed B.upon Condition, That B. not his heirs thould alien, the same was a god Condition by Fleetwood (which was granted per Curiam.) And this Condition was annexed to god purpose, for the Serjeant well knew, that Cestuy que use might have levied a fine, or suffered a Aecovery by the Statutes of 1 R. 3. 4 H.7 And this Condition annexed of tied to the use by the caill is now knit to the possession, which is transferred to the use by the said Statute: Although it may be objected, that the Condition was annexed to the use, and now the use is extinct in the possession, and by consequence the Condition annexed unto it, as where a Seignozy is granted upon Condition, and afterwards the Cenancy escheats, now the Seignozy is extinct, and so the Condition annexed to it: But as to that it may be answered, That our Case cannot be resembled to the Cases at Common Law, but refis upon the Statute of 27 H.8. fcil. Cestuy que use shall stand and be seised, deemed and adjudged in lawful seisin, estate and possession of and in such Lands to all intents, constructions and purposes in Law, of and in such like estates as he had in the use, and that the estate, right, title, and possession that was in the freedest shall ve clearly deemed and adjudged to be in Cestuy que use, after such quality, manner, form and condition as be had in the use: And therefore in the common affurance by bargain and tale by Deed enrolled, if fuch affurance be made upon Condition: As in case of Wortgage, the possession is not raised by the Bargainee; but by the Bargain an use is raised to the Bargainee, and the possession executed to it by the Statute, and the Condition which was annexed to the use only is now conjoyned to the possession, and so it hath been adjudged. if the Feoffees to use befoze the Statute had made a Leafe foz life, the Leffee commits Mak, the Statute comes, now Cestuy que use which was, shall have an Action of Wast, sas it was adjudged in Justice Southcotes case: So a Title of Cessari in the Feoffees shall be executed by the Statute. So if the King grants to the Feoffees in use, a Fair, Parket, of Matren, these things shall be executed by the Statute, as it was holden in the Case of Clarentius. As to the Condition, they conceived, That it is broken; for where the Deviser had allowed to the Deviser to discontinue for life, to make a Deviloz had allowed to the Devilee to discontinue for life, to make a Joyntute

Conditions.

Southcotes

Clarentin.

Fornture to his Clife, now he hath exceeded his allowance, for he might have made a Jornture to his wife indefeisable by Fine upon a Stant upon a Kender for life, ac. But this Fine with the Proclamations is a Bar to the former cutail which was created by the Devise, and hath created a new entail, and the former tail was varted by the fine against the intent of the Devilog: Also by this fine he hath created a new Remainder, so as his Inue inheritable to this new entail might alien and be unpunished, which was against the meaning of the Deviloz: And as to the Lease for Moes to the Desendants, the same is not any breach of the Condition, for that is warranted by the Statute of 32 H.8. which enables Cenant in tail to make such a Lease, so as it cannot be said a Discontinuance, which Anderson and Periam granted: But the Fine levied after is a drench of the Condition, and then the Ke-entry upon the Lesses, who have their estates under the Condition is lawful: As where the wife of the Feosles upon Condi-Condition is lawful: As where the wife of the Feoffee upon Condition is endowed, and afterwards the Condition is waken, now by the feetile of the Feoffee the Dower is defeated. And shuttworth put this case, A feoffment is made upon Condition, that the Feoffee thalf lease the Lands to A for like, and afterwards grant the Keversion to k in fee, the feoffor may re-enter, for by this Conveyance he in the keversion is immediate Cenant to the Lozd, where, by the intended assurance, the particular Cenant ought to be. Puckering, Fenner, and Walmelley contrary: And by Walmelley, By this device the use only passeth, and not the Land it self, for the Statute of 1 k. 3. extends only to Reservented in the lift of Cestuy que use, and not to devices which are not executed till after the brath of the Devisor, which see 4 Ma. Dyer 143. Trivilians case. See also 6 E.6. Dyer 4. The Lord Bourchiers case 4 but 10 H.7. Cestuy que use deviseth, That his Executors shall sell the Land, now by the sale of the Land in possession, for the same is in a manner now by the fale of the Landin possession, for the same is in a manner an Ax in his life, for the Ciendee is in by Cestry que use, and here is a Condition, and not a Limitation, for the nature of a Condition is to draw back the estate to the Feostor, Donor, or Lestor; but a Limitation carrieth the estate further. And he conceived, That the Condition is not draken by this Ax, for the intent of the Devilor is pursued, for his meaning was, That the wife should have a Joynture invested as against the slide in tail, and that the inheritance should be preserved that both should be observed: And he saw, that this Fine being levied by him in the Aeversian upon an estate for life is not any discontinuable, but yet shall but the estate Tail. And the Assistance were clear of officen, that the Condition is broken, and also that the intent of the Condition is broken; for it might be that Charles had iffue by a former wife, which by this fine hould be disinherited, and a new Entail set on fort against the meaning of the Devilor, ec. and afterwards Judgment was given for the Plaintiff.

Hill. 31 Eliz. Rot. 355. In the Kings Bench.

CCCCX. Simmes and Wefcots Cafe.

Detation, that he would marry the Defendants Daughter, the Defendant promited to give him 2012 and alla to produce him all the Com growing won such Lands, and to produce verestates for the weighing dimner the Defendant our confess the communication between them, and that he promifed to give the Plaintiff 2012 for as he would produce a Lease of certain Lands to his Damyhter to her life absorb hoc, that he promifed mode & forms: The Jury found the promise of the 2012 but not any other thing; it was moved in arrest of Judgment, that

the Assumplic whereof the Plaintiss hath veclated, although it consist of vivers things, yet it is entire, and if the whole is not found nothing is found; and the Case of 21 E.422. was cited touching variance of Contract, as where an Action of Debt is brought upon a Contract of Contract, as where an Action of Debt is brought upon a Contract of a borle, and the Jury found a Contract for two borles, the Plaintiff thall never have Judgment; On the other five it was faid, Chat the Plaintiff thall recover damages for the whole that is found, for the 201. See 32 H.8. Br. liftue 90. In an Action upon the Cale, the Plaintiff declared, that the Defendant Did promile to deliver four Woollencloaths; the Defendant pleaded, Chat he did promile to deliver four Linnen-cloaths, abque hoe, that he promiled, ac. the Jury found, Chat the Defendant did promile to deliver two Woollen-cloaths, and the Plaintiff did recover damages for the two. So in Wash, the Wash is affirmed in funcideado 20 Daks, woon which they are at Affire, the Tury Plaintiff did recover damages for the two. So in Math. the Math is affigued in succidendo 20 Daks, upon which they are at Asie, the Jury find but ten Daks, the Plaintiff shall have Judgment for so much, and shall be amerced for the residue. Gawdy Justice, here are several Asiempsis in Law, as Br. 5 Ma. Action sur le Case 108. a man in consideration of a Barriage assumes to pay 201. per Annum for four years, two years incur, the party brings an action upon the Case so, the arrearages of the two years. Wray, In an action upon the Case, the Plaintiff ought not to vary from his Case, as if a promise be grounded upon two considerations, and in an action upon it, the Plaintiff declares upon one only, he shall never have Judgment, and here the Jury have not found the same promise. Clench, If promise be made to deliver a worse and a Cow, and the worse is delivered, but not the Cow; the party shall have an Action for the Cow, but he shall declare upon the whole matter and afterwards Judgment was given, quod querens nihil capiat per billam. and afterwards Judgment was given, quod querens nihil capiat per billam.

Trin. 31 Eliz. In the Kings Bench.

CCCCXI. Stile and Millers Cafes

Tithes. 1 Cro.161, 5.78. 11 Co.13.

Parson Leased all his Slebe Lands soz years, with all the pro-tits and commodities, rending 13.4d. pro omnibus exaction ibus a demandis, and afterwards libelled in the Spiritual Court against his Lesses soz the Cithes thereof, the Lesses obtained a Prohibition. See 32 H.8.Br.Dis. 17.8 E.2.Avowry 212. Wray, Tithes are not things isluing out of Lands, noz any secular duty, but spiritual; and if the Parson both release to his Parson and demands in his Lands, tithes thereby are not extinct, and afterwards a Confultation was granted.

Trin. 31 Eliz. Rot. 902. In the Kings Bench:

CCCCXII. Lee and Curetons Case.

Debt. 1 Cro. 153.

Error.

I Cro. 758. 778.

In Debt upon an Obligation the Defendant pleaded Non est factum, and it was found for the Plaintist, and Judgment given, and afterwards the Defendant brought Error, and assigned for Error, that the Declaration was per scriptum sum obligat. Without saying, his in Guria prolat to which it was answered by Coke, that the same was but matter of form, for which a Judgment ought not to be reversed, for that the Clark ought to put in without instruction of the party, and so it was holden in a case betweet Barras and King, M. 29 & 32 Eliz. Another of the mass and safe men, because the Judgment is entred de fine nihil quia Erroz was astigned, because the Judgment is entred de fine nihil quia perdonat. where it thouse be quod capiatur, although the Plea were pleaded after the General pardon, and for that cause the Judgment

was reverled, for if the pardon be not specially pleaded, the Court cannot take notice of it, as it was holden in Serjeant Harris Cale.

Trin. 31 Eliz. In the Kings Bench.

CCCCXIII. Lacy and Fishers Case.

In a Aeplevin, the taking is supposed in s. which Land is holden of the Manoz of Esthall; the Defendant made Conusans, as Bailist of the Lord of the Manoz aforesaid, and issue was taken upon the Cenure, and it was treed by a Jury, out of the Visic of Esthall only. Tanfield, The trial is good, for the issue ought not to have been tried by both Visics, Sand Elthall, for two things are in iffue. If it be holden, or not. 2. If it be holden of the Aganor of Elthall, for which cause the Vine ought to be from both places; and the opinion of the Court was, Chat for the manner of it, it was not good, as if an illue be topned upon common for cause of vicinage, it shall be tried by both Cowns, See 39H.6.31. by Linkcause of vicinage, it shall be tried by both Towns, See 39H.6.31.by Littleton and Danby, and the case in 21 E.3.12. was cited in a per qux service, the Spannoz was in one county, and the Lands holden in another county, the Tenant pleaded, that he did not hold of the Conusoz, and that he was tried by a Jury of the County where the Land was, See 2 H. 4. Gawdy demed the Book cited of 21 E. 3.to be Law, and the reason where soze the Visine shall come from both places, is because it is most tikely, that both the Visines may better know the truth of the matter, than the one only. Another Exception was taken, because the Conusans (as it seems) is made according to the Statute of 21 H.8.19. and yet the Statute of 21 H.8.19. and yet the Statute of 21 H.8.19. and yet the Statute in About of Statute through the whole Conusans: cap.19. any person certain to be Tenant to the Land, &c. norto make Abow-ty of Conusans upon any person certain; and now in this Conusans be bath not made Conusance upon any person certain, but yet he hath named a person certain to be Tenant, &c., and in as much as this Conulans is not made, either according to the Common-Law, or according to the Statute, it cannot be good. But that Exception was diffallowed by the Court, for if the Statute remedieth two things, it remedieth one, and the Connlance made in form as above, was well enough by the opinion of the whole Court.

Trin. 31 Eliz. In the Kings Bench.

11 6.

CCCCXIV. Dierfly and Nevels Cafe.

In an Action of Crespals, the Desendant pleaded Norguilty, and if he 2 Roll. 662. Imight give in evidence, That at the time of the Crespals, the Free-yold was to such an one, and he as his servant, and by his Commandment entred was the question; and it was said by Coke, That the same might so be well enough, and so it was adjudged in Trivilians Case, so if he by whose commandment he entreth hath Right, at the same in stant that the Desendant entreth the Right is in the other, by reason whereof he is not guilty, as to the Desendant, and Judgment was suffer accordingly. given accordingly. ייי ביושה המתר נובר של ישלים בייי

Rawlins

Cafe. &

Savage and & Knights Cafe.

Harris and Bakers

In Cresposs for breaking his Close by Rawlins, with a continuando, It imas moved by Coke, that the Plaintist needed not to their a Regress to have Damages sor the continuance of the first Entry, scil. sor the mean profits, and that appears by common experience at this day, Gawdy Justice, what some the experience be. I will know that our basks are contrary and that without an Entry he shall not have vamages for the continuance, if not in cale where the Term of estate of the Plaish tist in the Landbe beter unners and to such opinion of Gawdy, the laticle Court did incline, but they did not results the point, because a step greis was proved, these no tile 15-38 H.6-27. Poit 319. id dian gu daimi er

COCCXVII. Harris and Bakers Cafe

chanicio de un unada

Accompt. Damages. 3 Len.192. Collet and An drews Cafe. 2 Len. 118. 3 Les 149. 3

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In an accompt damages were given by the Jury, and it was moved that damages ought not to have been given by way of damages, but use damages of the Plaintiff hall be confidered by way of Arrearages, but fee the Cale, H-29 Eliz in the Cammon Pleas, betwirt Collet and Andrews, and fee 10 H.6, 18. In Accompt the Plaintiff hall count to his damages, but half not secure damages, whee. H-7-1322 H.6. 18. City Plaintiff half not secure damages, whee. H-7-1322 H.6. 18. City Plaintiff half not secure damages expectly, but the Court flyill are putidum members to the Arrearages. Colle, It half been adjusted, that the Plaintiff half reposed damages where implications, non Records If de be ungolo communicament beenrecth gath Bight, at the fame in-

nolo31 d CCCCXVIII Might 36 Eliz In the Kings Beach

The words of the Statute 32 H.8.cap.37. of Rents are, that the Crecutor of a Stantee of a Kent-charge may distrain for the arreatages of the law Kent incurred in the life of the Cessator, to long as the Landcharged both continue in the Seisin or possession of the Tenant in Demen, who ought immediately to have pain the laid Kent so behind to the Celtatoz in his life,oz in the Seilin oz polletion of any other perfon

experions claiming the fato Lands only by and from the fato Tenant, by Purchale, Sift, or Discent, in like manner as the Testator might or ought to have done in his life time. And now it was moved to the Court. If A.grant a Kent-charge to Bthe Kent is behind, B dyeth A.infeosfeth C.of the Lands in fee, who diverse years after inteosfeth D.who diverse years after inteosfeth E. It was holden by Walmesey, Periam, and Windham Justice, against Anderson Lord chief Justice, that E. should be decreased to with the Color appropriate the Afreeness of A. October 1 chargeable with the laid arrearages to the Executors of A. But they all agreed, That the Lord by Escheat, Tenant in Dower, or by the curtess, should not be charged, for they do not claim in by the party only, but also by the Law.

Hill. 32 Eliz. In the Common Pleas.

CCCCXIX. Wigot and Clarks Cafe.

In a Clift of Right by Wigot against Clark for the Mannor of D. in Writ of the County of Glocester, the four knights gladis cincli did appear, and Right. took their corporal Dath, that they would chose 12,8cc. ad faciendum magnam Assisam, and by direction of the court they with drew themselves innam Afflam, and by direction of the court they withdrew themledge into the Exchequer chamber, and there did return in Parchment the names of the Aecognitors, and also their own names, and at the day of the return of the Pannel by them made, the 4 kinights and 12 others were sworn to try the issue, and it was ordered by the Court, That both the parties, sail the Demandant and the Cenant, or their attornies, attend the sail 4 kinights in the Exchequer chamber, and to be present at the making of the Pannel, so as each of them might have their challenges, so after the return of the Pannel, no challenge lieth, and thereumon the sail 4 kinights ment from the Bar, and within a floor and thereupon the faid 4 knights went from the Bar, and within a floot time after, litting the Court, they returned the Pannel witten in Parchment, in this form, Nomina Recognitorum, &c. inter Apetentem, & B. tenentem, and to let down their names, live other knights, ten Equires, and four Gentlemen, and the Juffices did commend them for their god and fufficient Pannel, and thereupon a Venire facias was awarded against the faid parties.

Trin. 30 Eliz. Rot. 611. In the Common Pleas.

CCCCXX. Pory and Allens Cafe.

The cale was, Chat Leffee for 20 years, leafed for 19 years, and then own 97. I the first Leffee, and one B by Articles in writing made betwire them, Post. 32., 323.4 dub conclude and agree, That the Leffee for 19 years should have a Leafe Surrender. we three years in the laid Lands and others, and that the same should 1 Cro. 302. not be any surrender of his first Term, to which Articles the laid Leffee for 19 years did after agree and assent unto, and it was the definion of all the Justices of the Court, that the lame was not any surrender, and then also were of animon. That are Termon could not surrender. and they also were of opinion. Chat one Cermoz could not surrender to another Cermoz.

Trin. 31 Eliz. Rot. 321. In the Common Pleas.

CCCCXXI. Glanvil ane Mallarys Cafe,

Lanvil was Plaintist in Audita Querela, against Mallary upon a Aodita Querela Statute Staple, for that the conulor was within age at the la. time of the acknowledging of it, it was moved for the Defendant, that 1 Cro. 1 + 24

Loves Cafe. Dudley and Skinners Cafe.

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the Court ought not to hold Plea of this matter, because there was no Record of the Statu te remaining here, and therefore by Lawbe was not compellable to answer it, & cand a President was visallowed; H.8. where sixth a pleading was allowed, and sudgment given, that the Defendant eat sine die, vide 16 Eliz. Dier 332. But on the other side vivers presidents were shewed, that divers such Wirts had been shewed in the Common Pleas, as 30 Eliz. Loves case, and the Lord Dodley and Skinners case, and thereupon it was adjudged that the Action did well by in this Court.

Mich. 32 Eliz. In the Common Pleas.

CCCCXXII. Pet and Callys Cafe.

Dabt.

In Debt upon a Bond for performance of covenants, the case was, i. S. by Indenture covenanted with I.D. that such a woman, viz.R.S. at all times at the request and charges of I.D. should make, execute, and suffer such reasonable assurances of such Lands to the said I.D. or his heirs as the said I.D. dr his heirs should reasonably devide or require. I.D. devided a fine to be levied by the said Woman, and required her to come before the Instices of Assue to acknowledge it, and the woman came before the said Justices to that intent, and because the said woman at that time was not compos menisthe said Instices did resule to take the Conforms of the said Fine, and this was averted in the pleading in an Assum the speach was assigned in not acknowledging of the said Fine, and upon the special matter the party did demur in Law, and the opinion of the whole Court was, that the condition was not broken, so, the mords had been special to acknowledge a fine, there if the Justice doth resuse to take such acknowledgment, the Bond is soffested, so, the party bath taken upon him that it should be done.

Mich. 22 Eliz. In the Common Pleas.

Wangford and Sextons Case.

1 Cro.174. Kel.87. 2.

The Plaintiff had recovered against the Defendant in an Action of Debt and had execution: The Defendant after the day of the Teste of the Fierifacias, and before the Sheriff had medled with theerecution of the Wizit, bona fide for money sold certain goods and chattels, and delivered them to the buyers; it was holden by the Court, that not with standing the said Sale, that the Sheriff might do execution of those gods in the hands of the buyers; for that they are liable to the execution, and execution once granted or made shall have relation to the Test. of the Wist.

Executions

Trin.29 Eliz. Rot. 2715. In the Common Pleas.

CCCCXXIV. Wilmer and Oldfields Case.

Award. Antea 140. IN Debt upon a Bond, the Condition was to perform the Award of 1.8, &c. the Arbitrators make Award, That the Defendant before such a day thall pay to the Plaintiff 10001, or otherwise procure one A. being a stranger to the Bond to be bound to the Obligee for the payatent of 121 per annum to the Plaintiff for his life, the Defendant pleaded the performance of the Award generally, the Plaintiff assign

en the breach of the Award in this, Chat the faid A had not paid the faid 1001. without heraking of the cause of the award of the 121 per annum, upon which the Defendant vid demut in Law; it was holden by the whole Court, that the Arplication was good, for the Award, as to the second point was ineedly brid, as if no such Award at all had been, because A was a stranger to the Award and the submissions but as to the 100 line stands of the 100 line same is good, and shall bind the patties, and the Plaintist had Judyment to recover, vide 21 E.475. 18 E.4.22,23.

Mich. 31, and 32. Eliz. Rot. 814. In the Common Pleas.

CCCCXXV. Fabian and Windfors Cafe.

To Crelpals for entring into his house or Inn at Uxbridge, it was teaser found by special verbick, Chat the Plaintiff leased to the Defendant i Go.209. The latd house for seven years, rending Kent at the Feats of the Annunciation of our Lady and Saint Michael, &c. with condition, that if the ladd kent shall be behind by the space of ten days, &c. that it shall be lawful to the Lestor to reenter: And afterward at the Feast of the Annunciation, 71 Eliz, the Rent was behind, and the tenth day after the Lestor continued the sain double a quarter of an hour before the sun services and there continued the sun was set, but no sent was palv: But note, that the Issue was, If he came to the Bouse now due, and there continued test shall was, If he came to the Douse half an hour before Sun set, and there continued demanding the half years Rent of the Permises we at the Feast of the Annunciation of our Lady then last pass. It was moved by Fenner, That upon this set of the Mue is not found for the Plaintis, i. the Issue was upon the half hour, and the quarter part of the bour was sound, 2 the Issue was, It the bemand were of the Kent due at the Feast of the Annunciation passed, and the Clevial was permand of sent due at the time of the demand, &c. And it was the opinion of Anderson, Periam, and Walmesley, That as to the stripping the Lesso, or any on his part both demands one penny more or less than is due, or in his demand doth not shew the certainty of the Sent, and the devote say of payment of it, and when it was due, the demand is not god, so a condition which goes in defeasance of an estate is odious in Taw, and taken strictly and strictly followed.

Mich. 32. Eliz. In the Common Pleas.

CCCCXXV. Elmes and Meldcalfes Cafe.

Ic was holden for Law by the whole Court, Chat if one of the wift, i Cross. Ineffes after the Jury are departed from the Bar; doth repeat unto the Jury the same Evidence which he gave before and no more, Chat that doth make the Aerold to be void.

Rt

Mich

# Mich. 32 & 33 Eliz. In the Common Pleas.

### CCCCXXVII. Carter and Claycoles Case.

Leafes: Mare 593. 4 Co 76.

In Ejectione firmæ by Carter against Claycole, the Plaintist veclated upon a Leafe made by the Mardens and Fellows of All-fouls Colledge, 14 july, 10 Eliz. And it was found by special Merdia. That Overden Marben of the said Colledge, and the Fellows, &c. leafed unto the Plaintiff, To have and to hold from the Feaff of the Annunciation next follows. ing, to the end of twenty years, and madea letter of Attomey to one to enter into the laid Manozano to leal and veliver the Deed of the laid Leafe in their names to the Plaintiff, who by force thereofentred into part of the demised Premises, and there did leal and veliver the same, &c. But it was not found that any rent was reserved thereupons and if this Leale were go , Then the Jury found for the Plaintiff; but if not, then for the Defendant: Cooper Serjeant, It hath been objected, That this Leale being but for twenty years, is not warranted by the Statute of 13 Eliz. Cap. 10. For the words of the Statute are, Other than for the term of 21 pears ; as to that, It was not the intent of the Statute, but only to abridge the great and long Leales heretofore made by Colledges, and to limit such Leales to a certain measure of time, ut supra, for twenty one years or three lives, & non ultra, but on this live as much as they would, which was granted by the whole Court : Another matter was because it is not found. That the due rent was reserved upon the said Lease (accustomed yearly rent of more) and yet the same is good enough, for if the other party will take advantage of such deseated. 333. be ought to shew the same, otherwise it shall be intended, because it is found that such Lease was made, that it was made according to the Statute: for if a man is to make title to himself by a conditional Leafe, he is not to plead the condition, but only the Leafe; and if the other party will defeat the Leafe by the Condition, he shall shew the fame. And in this Cafe, The Defendant also ought to have thewed the Statute: by which fuch defective Leafes are made void: Also it hath been objected, That by the Statute of 18 Eliz, the third part of the Acut ought to be referved in Com, and here is not found any Com; as to that, It is to be considered, that the said Statute is not a general Law, whereof the Judges are bounden to take notice, but it ought to be pleaded, for it extends but to four places, viz. Cambridge Oxford, Winchester, and Eaton, and therefore such a Statute ought to be plead ed, or given in Evidence, and found by Clerdia: As where a man pleads a general pardon, in which divers persons are excepted, he ought to plead it specially and shew, that he is not any of the persons excepted, 8 E.4.7. 28 H.7. So special customs ought to be pleaded, Gavelkind, So rough Englith, 21 E.4.55.36. The Ring grants to the Citizens of Norwich , &c. And afterwards by act of Parliament, all their Liberties, &care confirmed by a general confirmation to all Cities and Boroughs this is a special Act, and ought to be pleaded; by Brian, 59,13 E.4.8. Che Lozd Saies case, an Act of Parliament, That all Copposations made by the King H.6. Mall be void, is a special Act, and ought to be plead. ed: And see 28 H. 8, 27. & 28. Dyer. If the Statute of 21 H. 8. cap. 13. Of Landstaken to ferm by Ecclesiastical persons be a special Law: Yelverton contrary; The Statute of 13 Eliz. is a special Law and ought to be pleaded, but the Statute of 13 Eliz, is now a general Law, which see Hollands case.

Law, which fee Hollands cafe, 39 Eliz. and Damports cafe, 45 Eliz. And this Act of 13 Eliz. is general in respect of time, for it extendeth to all time after (from henceforth) and to all persons to whom such Leases

hall be made, the words the Statute are, scil. To any person of

5 Ce 6.

Special Sea tutes ought to be pleaded.

perfons, in respect of persons who shall lease, all spiritual persons: General in refrect of the end, which is the maintenance of learning, which extends to the common profit,&c. Drew Serjeant, Chat this act of 13 E liz. is general in respect of restraint only, and extends only to spiritual persons, and therefore ought to be pleaded, for otherwise the Court shall not take notice of it; As the Statute of 23 H.6. of Sheriffs ought to be pleaded, which fee in the Case of Dive and Manningham, Plowden, 64,65. And although the Statute ought to be pleaded, Pet this Lease is not boid Co. 1 Infl. 45. against the Marthen who made it, but against his Successor, although no rent be referved upon it, notwithstanding that the perclose of the Statute be(utterly boid and of none effect, to all intents, confirmations, and purposes) So upon the Statute of I Eliz. concerning Leases made by Bishops, the Law han been so taken in the case of the Bishop of Coventry and Lichfeild upon a Grant of the next Aboldance, Chat although it doth not bind the Successors, pet it shall bind the Grantor himself. So here this Lease being made by the present Warden and fellows of the Colledge afozefaid, although it be not sufficient to bind the Successor, Colledge aforefaid, although it be not sufficient to bind the Successor, yet it shall bind the Charden who made the Leale. Puckering contrary; and as to the cale of 13 E.4.8 the reason there is, because there is an Exception in the said Statute of divers Grants made by King H. 6. and therefore the said sat ought to be specially pleaded: And see 34 H. 6.34-by Prison: But in this sat of 13 Eliz. there is not any Exception, and although it be a general sat with a Restraint, yet such an sat ought not to be pleaded, and therefore 27 H. 8.23 in an action upon the Statute of 21 H.8 for taking of Lands to Ferm by spiritual persons, he need not make mention of the Statute: And afterwards, the Justices did advice upon this point, whether the Lease be so void, that it be void against a stranger: So as the Defendant who both not claim under the gainst a stranger: So as the Defendant who both not claim under the Colledge, and who hath no title to the Land may avoid it. And Periam Juffice denied the Cafe put by Puckering: A. moggages Lands to B. upon a ulurious contract for one hundred pounds, and before the day of pay. ment B.is oussed by Cagainst whom B.bzings an Action, C. cannot plead the Statute of Aury, for he hath no title: For the estate is volvagainst the Mortgagor. Another Exception was taken to the Declaration, because the Plaintiff had declared, upon a Lease by the Warden and fellows, without naming any name of the Warden, 13 E. 48. 18 E.48. In Crespals the Defendant both justifie, because that the Free-hold was in the Dean and Chapter, and he as Servant, and by their commandment entred; And Exception was taken to that Plea, because be hath not thewed the name of the Dean, scil. the proper name: So if a Lease be made by Dean and Chapter in these words, Nos Decan. & Capituli, the same Lease is void, which was granted by the Court: and 12 H. 4251. A Provost granted an Annuity by the name of Provost of such a Colledge, without any name of Baptism, and afterwards the Grantee wought a Write of Annuity against the Successor of the said Provost; and by Hull, The Write well enough, but the Christian name ought to be let down in the Write is observation that the name of Baptism of the Writer was to the Besterotion that the name of the Writer was to the Besterotion that the name of the Writer was the former of the Writer was the College of t of the Clarden is not in the Declaration, the same is not god: But the opinion of the whole Court was. That the Declaration is god enough, and they did rely especially upon the Book of 21E4.15, 16. Where Debt is brought by the Dean and Chapter without any Chissian name, and the Cleit holden god: Anderson: It stands with reason, Chat for as much as the Colledge was incorporated by the name of War-den and Fellows, and not by any Christian name that they may pur-chaseand lease by such name without any Christian name, and may be impleaded, and implead others by such name, and as the Fellows fir such case need not to be named by their Chissian names, no more ought the Warden: But of a Parson, Clicar, Chauntry Viell, it is otherwise, so in such case the name of Baptism ought to be added to the control of the control

ved: It was also objected, That because the Letter of Attorney was to enter in the Manoz, and all the Lands and Cenements of the Colledge in such a Cown, and to seal the Indenture of Lease in the name of the Lesson, and to beliver it to the Plaintist as their Deed; now the Attorney in executing of this Marrant hath not pursued it, for he bath only entred into the Lands, but it is not found that he entred into the Aganoz, and so the Lease is void. And it was said by Puckering, That if I lease two Acres in two several Counties, rendzing soz the one Acre 10 s. and foz the other Acre 10 s. and make a Letter of Attozney to make Livery in both; if the Attorney entreth into one Acre and makes Livery, the same is void, for the Attorney bath not pursued his authority, for peradventure I would not have leased the Acre whereof Livery is made for such rent of 10% being perhaps of greater value, but with the other Acre which was of letter value, and so the miserecuting of my warrant shall prejudice me. Windham, Perhaps if one entire Kent bad been reserved out of both Acres, it may be that by the Kivery in one Acre all is void: But by Puckering, one entire Kent cannot be reserved upon such a Leafe of two Acres in Everal Counties. Walmeley denied the Case put by Puckering, for the authority is executed well enough, for it both not appear upon the Clerdic, but that the Colledge was in possession at the time of the Lease made, and then there needed not any fuch Entry, but the bare fealing and belivery of the Attomer is good enough. And also it both not appear by Aerdia, That the Colledge hath any Manor, and therefore it shall be so intended; and then the Case is no other but that, a man leaseth a Manor, and certain Lands in D and makes a Letter of Attorney to make Livery of them, where he both nothing in the Manoz, and the Attorney makes Livery of the Land without medling with the Manoz, the lame is a good Livery, and the authority duly executed: But if it had been express found, that the College had such a Manoz there, then the Entry in the Land only, without medling with the Adanoz, and the Livery made accordingly, should not be good: But yet afterwards he seemed to be of other opinion. And as to that which hath been objected. That the Lease is void to all intents and purposes, according to the words of the Statute (for by some it cannot be resembled to the case cited before, of the Bishop of Coventry and Lichfeild, that such a Stant should bind him and not his Successor;) for if this Stant in our Case shall not be boid presently, it shall never be boid; for the Colledge never dieth no more than Dean and Chapter, Mayor and Commonalty. To that it was answered by Drew, That although there be some difference betwirt such Corporations, and that the words of the Statute are general (void to all intents, constructions, and purposes,) yet they shall be constructed according to the meaning of the makers of the Act, whose scope was to provide for the Successors, and not for the present Incumbent, and to the utter impoverishing of all Successors, without any respect to the party himself, as it appeareth by the preamble of the said Statute; where it is observed, That by long and unreasonable Leases, the decay of Spiritual Livings is procured; for the remedying and preventing of which long Teales this Act was made, and that the Successors should not be bound thereby. And these Leases are not bold, simpliciter sed secundam quid, i.e. as to the Successors: As upon the Statute of 11 H.7. cap. 20. Discontinuances made by Clomen. Co. shall be voto and of none effect; yet such a Osscontinuance made is good against the Moman her self: So upon the Statute of 1 Eliz-concerning Bishops. See now Coke, Lincoln Colledge Case, 37 Eliz-in the third Reports 60. A Tease made by Dean and Chapter not warranted by the laid Statute, thall not be void until after the death of the Dean, who was party to the Leafe. So upon the Statute of 13 Eliz. of fraudulent Conveyance is

not void against the Stantoz, but against those who are provided soft by the satd Statute, and that the Lease in the principal case is not void, but voidable, all the Justices agreed to be avoided by the Colledge, or any other who claim by it; and by Anderson, If such a Lease should be void, then great mischief would fall to the Colledge, soz whose benefit this Statute was made, soz is such Lease be made rendring a small sent, then if before the detect be found or espied the Kent was arrear, the Colledge could not have remedy sor the satd Kent. Also by Periam, Such a Lesse might have an Action of Crespass against a stranger, who entreth upon the Land, which prodes that the Lease is not void, but voidable; and afterwards notwithstanding all the Objections, Judgment was given for the Plaintist, and the chief Authority which moved Periam Justice to be of such opinion was Lemans case, cited before 28 H. 8. Dyer 27, where a Lease was made to a Spiritual person against the Statute of 21 H.8. and a Bond or Obligation sor persormance of covenants, and thereupon an Action was brought, and the Plaintist therein had Judgment and recovered, which could not have been if the Lease were utterly void against the Lessor and Lesses, as the very words of the Statute are, and although it is not alledged in the Book, that that was any cause of the Judgment, yet in his opinion it was the greatest cause of the Judgment in that case.

Pasch. 35 Eliz. In the Common Pleas. CCCCXXVIII. Bighton and Sawles Case.

In an Action upon the case, it ws agreed by the whole Court, That i Cro.237. where Judgment is given, that the Plaintiss shall recover, and because it is not known what damages; therefore a Writ issued to enquire of the damages. That the same is not a perfect Judgment before the damages returned and adjudged, and therefore they also agreed, that after such award, and before the damages adjudged, that any matter might be shewed in Court in arrest of the Judgment; and by Periam Justice, the dissernce is, where damages are the principal thing to be recovered, and where not; for it damages be the principal, then the full Judgment is not given until they be returned; but in Debt where a certain sum is demanded it is otherwise.

Pasch. 33 Eliz. In the Common Pleas. CCCCXXIX. Maidwell and Andrews Case.

Addwell brought an Acion of Covenant against Andrews, and the Covenant, Case was this, Chat R. was seised of Lands, and leased the same too life, rending Kent; and asterwards devised the Keversion to his wife for life, and died. Andrews the Desendant took to wife the wife of the Deviso, the Devise of the Keversion; afterwards Andrews hargained and sold the said Keversion to one Marland and his heirs during his own life, and afterwards granted the Rent to the Plaintist, and covenanted that the Plaintist should enjoy the said Kent during his Cerm, absque aliquo legismo impedimento of the said Andrews, his beirs of Assigns, or any other person, claiming from the said Marland. Marland diedseised, and the same desended to B his heir; and the breach of the Covenant was assigned, in this, i in the heir of Marland, who bath the Kent by reason of the Grant of the Reversion to Marland, ur supra, the Desendant pleaded the Grant of the Keversion to Marland, per scriptum (without saying, Sigilo suo sigillat. & hic in Curia prolat.) absque hoc, that the said Reversion and Rent descended to B. and thereupon the Plaintist did demur in Law, and the causes of the Demurter was assigned by Yelverton Serjeant.

1. The Grant of

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Traverse. 1 Cro.278-

> Vernon and Grays Cafe

the Reversion is pleaded per scriprum, and he doth not say (sigillar.) for a secretion cannot pass without Deed, although it be granted but sor pleats; and a have writing is not a Deed without scaling of it, and therefore the pleading ought to be per scriprum sum sigillar. Of per sactum sum; sor sactum sum implies the ensealing and delivery.

2. It ought to be pleaded his in Cur. prolat. sor the Court is to see such Deed, to the end they may know if it be a lawful Deed, without rature, interinting, or other befects.

3. The Defendant hath traducted the descent, where he aught to have traducted the dring scised; sor of every thing neckendable the dring scised is the substance, and the descent is but the effect: And although the Grant of the Reversion was but sor the life of the Grantor, pet the estate granted is descendable, as 2.7 E.3.31.

Tenant by the Courtese leaseth his estate to one and his heirs, the Grantor vieth, his heit entreth, and a good Bar against him in the seversion, and see 14 E 3. Action 56. Annuity granted to one and his petrs for the term of another mans life, the Grantor dieth, living Cestur que vie, the speir of the Grantor drings a writ of Annuity, and it was holden maintainable; and he said, that where the dring scised is consessed and abouted by the other side, there the Descent is traders said, and not the dring selsed, and that was the Case betwirt Vernon and Gray. In an Aboung Vernon conveyed the Lands from the Lond Powes to him, as nett Desire to him, because the Lord Powes deed selsed in his Demein as of fee without issue, and the Plaintist conveyed from the said Lord Powes by Devise, and tradected the Descent to the Aboutant, sor the Oping selsed was consessed and abouted by the Debuts, 22 Eliz Dyer 366. See 21 H.7.31. In Cresals the Descent to the Sudmant, sor the Oping selsed was consessed the Lord Powes deed to thim as Son and Decentariant bath. That it was selsed, and died selsed, and that the Lands bescended to thim as Son and besternand that he entred; the Plaintist said. Th him as Son and beir, and that he entred; the Plaintiff sato, That T. was seited, and took to wife K. and they had issue the Plaintiff, and bied seised, and the Land descended to him, and traversed the descent to the Defendant; and see Sir William Merings Case, 14 H. 8.22,23. But if the parties do not claim by one and the same person, or the dring feised be not confessed and avoided, there the dying seised shall be tra-versed, and not the descent. Glanvil Serieant, We the Bar insufficient of not, if the Declaration he not sufficient, the Plaintiss shall not have Judgment, and here is not any breach of Covenant, viz that the Plaintiff thall enjoy it without any lawful impediment of the Defendant, his Heirs of Asigns, of any claiming by Marland, and then if the Heir of Marland connot make any lawful claim, then there is not any breach of Covenant alligned; and he faid, because it is not shewed that the Land is not holden in Socage, the Devise is not good, for it may be that the Land is holden in Capite: but admit the Devile good, that when Andrews bargains and fells unto Marland, and the Cenant never attorns, then nothing paffeth, and then the weir of Marland cannot make any lawful claim or lawful impediment. Periam Juffice, were Marland was affiguee of Andrews, and if he or his heirs make claim, although that the affigument be not lufficient in Law, yet because he hath colour by this affigument his claim is lawful, and so there is a breach of the Covenant; and although it is not alledged, that the Land deviled is holden in Socage, pet the Devile is good for two parts of the Land. Anderson Justice, If it be good but for two parts, then is the Keversian apportioned, and the Kent activoyed, and so Marland bath not any Kent by his purchake of the Kenersion, and so he can't lawfully disturb the Plaintiff. The Law both create his apportionment, which grows by the Devise, and therefore the Rent shall not be destroyed; but it it had been none by the Act of the party, it had been otherwise, and I would willingly hear, if the beit of Marland be affiguee of Andrews, for otherwise he is not within the words of the Cubenant, for Marland hath an estate to him and his heirs for the life of another:

Now after the beath of Marland, his heir is a Opecial occupant, and vide H. 26 Eliz. Rot. 560. in the Common Pleas, fuch an Detr Mail not have his age.

Pasch.33 liz. In the Common Pleas.

COCCXXX. Oglethorpe and Hides Cafe.

To Debt upon a Bond for the performance of Covenants, it was debt. I holden by the phole Court, That if the Defendant pleaded generally the performance of the Covenants, and the Plaintiff with bemur generally upon it without shewing cause of Demurrer: Judgment shall be given according to the truth of the cause, for that default in pleading is but matter of form, and is asked by the Statute of 27 Eliz. But if any of the Covenants be in the disjunctive, so as it is in the Cleation of the Covenantor to do the one of the other, then it might to be specially pleaded, and the performance of is, for other mise the Court cannot know what part bath been performed.

Mich. 32 Eliz. In the Common Pleas.

CCCCXXXI. Tracy and Ivies Cafe.

In Dower by Margaret Tracy against lvie, the Case was, That John Dower. Finch was seisen, and enseased shipton and others of two parts of the Lands to the we of himself and the Defendant his then wise, and their beits so ever, with Condition, That if his said wife did survive him, the should pay such sums of mony not exceeding two hundred Co.4. Verning pounds, to such persons which the feostor by his last Aliss should cake appoint; and afterwards he declared his Aliss, and thereby appoints a certain sums of mony to be paid to divers persons, amounting in the whole to the sum of one hundred and step one pounds, and by his said will be vised the resonne of his Lands to divers of his kindled, having no issue, and died; The wife matried Tracy, and they beought Dower against the Devises, who pleaded the feasiment asortate, and averted the same was made so the Isonawa of the Demandant. In because that no other matter of circumstance was proved to beging the Avernment, the Court mored the Jury to sind so the Demandant dant, which they did accordingly. In Dower by Margaret Tracy against Ivie, the Case was, That John Dower. bunt, which they bid accordingly.

Mich. 32 Eliz. In the Common Pleas.

CCCCXXXII. Bond and Richardions Cafe.

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Debt upon a Bond, the Condition was to pay a deflection fund petc.

adam, and at theha placed is Defendant pleaded payment about a Cro. 142.

Ing to the Condition upon which they were at flue, And it sectioned by Clerolic, Chat the leffer furn was paid such a day before the day contained in the Condition of the Bond, and then received; and upon this Clerolic Judgment was given for the Plaintiff, for the day the natural material, not the place, but the payment if the full lance. mot material, not the place, but the payment is the fubitance:

#### Trin. 32 Eliz. In the Common Pleas.

#### CCCCXXXIII. Marshes Case.

Frover Lad

Door came to a feme covert by Trover, and the and her put band viv connect them to their own use. It was holden per Curiam, That the Acion upon the Case thall be brought against the Pusband and Mise, and not against the Pusband only, for the Acion both sound in Crespals, and it is not like unto Detinue; for upon a Detainer in the Mite, the Acion lieth against the Pusband only.

Trin. 32 Eliz. In the Common Pleas.

#### -CCCCXXXIV. Corbets Cafe.

Debri z Len 60. A Mation of Debt was brought by Driginal Carit against an administrator in another County than where the Administrator was commorant, and before notice of the Suit he past divers Debts of the Intestate due by specialty, and is be had not asset to pay the Debt in bemand, having assets at the day of the Teste of the Original. And now, the Defendant appearing, pleaded this special matter, and concluded, so he had nothing remaining in his hands. And it was holden per Curiam, to be a good Plea. See 2 H.4.21,22

Pleinment Administrad. 3 Cro.753.

Mich. 32 Eliz. In the Common Pleas.

### CCCCXXXV. Gillam and Lovelaces Cafe.

Atharine Gillam, Administratrix of John Gillam, brought Ejectione from against Leonard Lovelace, and upon not guilty pleaded, it was found so the Plaintist. It was moved so the Defendant in arress of Judgment, That the Declaration was not god, because the granting of Letters of Administration is set sooth in this manner, viz. Administratio commiss suit Querenti per Willielmum Lewen Vicarium generalem in spiriualibus Epi. Ross. without aberting, that at the time of the granting of the Letters of Administration, the Bishop was in remotis agends, so a Bishop present in England cannot have Vicarium: But as to that, it was said by the whole Court, That the Aicar general in Spiritualibus, amounts to a Chancelloz, so in truth the Chancelloz is Aicar general to the Bishop. Another Exception was, because the Declaration is not Epi. Ross. loci illius Ordinarii; but that was not allowed, so all the presidents and course of the Court is, That by way of Declaration such allegation needs not, but by way of Bar it is necessary. Another Exception was taken, because the Plaintist bath declared of an Esteument, and also good bons & catalla bidem invent cepit, &c. And here, in the Aeroic the damages, as well so the Estenment as so the Goods and Chattels, are entirely tared. At was adjorned.

#### Mich. 32 Eliz. In the Common Pleas.

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10 a Keplevin, the Defendant made Conulans as Bayliff to one Replevin, and 6 Eliz. enfeotfed certain persons in sec to the use of his last 19(11, by which he willed, that his feosfees should stand seiled of the said 19(11, by which he willed, that his feosfees should stand seiled of the said lands the said sands the said sands of the said sands bevies. It was objected spaints this Conne Poph. 188. Sans, that here is no device, so A at the time of the device had not any feosfees; but the Exception was disallowed by the Court: And they cited the tale of 15 Eliz. Dyer 323 Linguistale, A made a feosfement in see to his use, and afterwards bevised that his feosfees though be seiled to the use of his Daughter, that the same was a good bevise of the Kand. See 29 H.8. Br. Devise 48. Greeves and Rockwood, &cc. and lato, That A. was letter of the Lands.

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Mich. 31 & 32 Eliz. In the Common Pleas.

### CCCCXXXVII. Kempton and Coopers Gafes to Indian

to is tist at In Crespals to breaking of his Close, the Defendant pleated, that Bar.

before this he had brought an Excione from against the high Plain.

I kended this he had brought an Excione from against the high Plain.

In on recovered, and had Execution, et. Judgment, if Action, et.

And by Periam, Windham and Anderson Judices, the some is a good Bae, and the conclusion of the Plea is also good. Judgment, if Action, without relying upon the Estoppel.

Mich. 32 Eliz. In the Kings Bench.

#### CCCCXXXVIII. Leigh and Okeley and Christmass Case.

Liphe Leigh Fermoz of the Queen of a Wood called Meerherst 1900 in Warplesden in the County of Surrey, brought an Action of Erefies against Henry Okeley and Robert Christmass for breaking of the said pais again? Henry Okeley and Robert Christmas for breaking of the faid Mood, and therein entring and cutting bown of two hundred loads of Mood, and carrying away the same, at. The Defendants pleaded, That before the time in which the Trespass was supposed, at. That king H. 8. was seised of the Manor of Warplesten, whereof the sate Mood was parcel, of which Manor a Close called Wirhybod containing eleven Acres, eidem bose adjacent was parcel, and that the said Mood is, and time out of mind, at. was closed and separated with hedges and Ditches from the said eleven Acres, which said Hedges and Ditches, per totum tempus prædict, sucrum & adduc sum prædict, bose spectant, & pertinent. And that the said eleven Acres are, and time out of mind were customary Lands, parcel of the Manor aforesaid, and demiled and demilable in fee simple: And that the said that the said king H. 8. at a Court huspen 38 H.8. by his Dieward demiled the said eleven Acres by copy, to some Going and his Delve, and that within the said eleven Acres by copy, to some Custom, That every Copyholder, Tenant of the said eleven Acres, at. but used and accustomed, per se velseriences suos per corum precept. succided, capere, & asportare subbosum in prædict, boscom in quo, &c. and the faid prædicturum sepium & defensionum interprædict, boscom in quo, &c. and the said predictarum sepium & desensionum inter predict. boscum in quo, &c. and the said eleben Acres, at, quandocumque eadem sepes & desensiones in decast extremor; and shewen surteet. That at the time of the Erespile, at, the safe

pedges and Fences were in decay, and so justified: Apon which the Plaintiff did demur in Law. It was argued by Godfrey, Chat the Prescription is not good; for it appeareth, that this customary Land is contigue adjacens to the faid Wood, i. where the Trespass was bone : And of common Aight, the making of the Geoge doth appertain to the Owner of the Wood: And the Prescription is no more, but to take Wood in the Lands of another adjopning to my Land, to make the Dedges of the same Land in which the Wood groweth, which cannot be a good Prescription, for it sounds in charge, and not to the profit of him who Prescribes: Alhich see 22 E. 3. Prescription 40. Trespass against an Abbot, because where the Plaintist was Farmor of the King of his bundred of D. and by reason thereof he might make Attachment, and distrain for the Debts of the King within the said hundred, and where for a certain debt of the King he distrained the Beaus of one A and the Abbot made Aescous; to which the Abbot said, That he was Lord of the Manor of D. within which Manor there was this custom, ac. That if any Distress be taken within the said Manor, that the same should be put into the Pound of the said Abbot of the same Manoz, and not diven out of the Manoz, and there ought the Distress to remain three days, so that if the party would agree within the three days, that then he should have his Beasts, and he sato, That the Plaintist would have driven the said Beasts out of the said Agano, and that he would not luffer him, upon which there was a Demurcer, because it is not any profit to the Abbot, but a charge to keep the Beasts of another. Also be said, That the King shall not be bound by such a custom as another person shall, whereupon Judgment was given tor the Plaintist: So here in the principal case, There shall be no damage to the Desembant if the scalar has been found. roz the Plaintiff: So here in the puncipal cale, There that he no damage to the Defendant if the Calood be not fenced; for if his Cattel escape into the Wood he may justifie it, because it is in default of the Plaintiffs inclosure: And if the Beaffs of the Plaintiff escape into the Lands of the Defendant, he may take them Damage Fealant for the cause aforeside, 21 H.7. 20. A Custom is pleaded, That if any Tenants of the Panorshall take the Cattel of any one Damage Fealant, and shall therefore distrain them, that then the Tenant so distraining them ought to dring them to the Lords Pound, which if he shall not do, at the next Court he shall be amerced in a certain sum to the Lord of a Panor to be pass, and that was holden no group custom, be Lord of a Manorto be paid, and that was holden no good custom, because it is against common Right, and the common Law; for by the common Law and common Kealon, every one finding Cattel in dis own Land Damage Fealant may impound them in his own Land, and the Lord is not damnified thereby: So it is of a By-law, That every one who holdeth so many Acres of Lands in such a Cown, hall pearly pay a certain fum of mony to the Church of the same Cown, and thall forfeit for every default of payment thereof twenty pounds, fuch By-law, although it hath continued time out of mind, yet it is not of any validity, because for not payment of the said sum to the Church, the Lord of the Manor is not damnified, and therefore he thall not have any gain; contrary if the penalty had been limited to the Church-wardens, because they are bound to repair the Church. Another Exception was taken to the form of the Prescription (Quandocunque exdem lepes & defensiones in decasu extiterint) and that is too general, for to they might be in becay by his own default, as if he himself wrongfully pull up the Pedges, in which case there is no reason but that he should repair them at his own costs and charges, and therefore he ought to have pleaded cum in de casu exciterint in the default of the Tenant of the Wood. Another Exception was taken, because hat bere this custom is pleaded particularly, and appropriated to the eleven Acres only, and is not extended to the whole Manor; and to that purpole the case of 40 E 3. 27. wascited, wherea custom is applied to Austin and Smiths ? Cafe.

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one part of a Town, as to fag that flich a woule within flich a Town is of the nature of Savelkino, and the reft of the Cown is guildable. See 21 Eliz. Dyer 363. It was adjoined, &c.

Hill. 20 Eliz. In the Common Pleas.

CCCCXXXIX. Hare and Okelies Cafe.

Michael Hare, and others, brought an Action of Trespals against Trespals.

Okelie for breaking of their close, and carrying away their corn; and upon Not guilty, it was found by special Aerdict, That the said Michael Hare was sole seised of the said Close, where, to. and so seised, exposuit ad culturam, Anglice, did put forth to Tillage the said Land to the other Plaintiffs in form following, viz. That the said Michael thould find one half of the Corn sowed, and the other Plaintiffs the other half, and that the said Land thould be ploughed and tilled, and the Corn thereof coming should be reaped and cut at the charges of the other Plaintiffs, and so cut should be divided by the Shock, and the said Michaelto have the one half, and the other Plaintiffs the other the last Michael to have the one half, and the other Plaintiffs the other half, ec. And it was the opinion of the whole court, That notwithflanding thele words (exposuit ad culturam) that no estate in the lost passed Exposition of to the other Plaintiffs, but the said Michael did remain sole seised as words. befoze; but by Anderson, upon the severance of the Cozn, peradventure a property in the said Cozn might be in all the Plaintiffs: But because it appeareth, that Michael was sole seised, and the other Plaintiffs had not any thing in the Land: Therefoze it was adjudged, that they could not soyn in the Action of Trespals soz breaking of the Close; and therefoze it was awarded by the Court, that the Plaintiffs nihil Cap. per breve.

Trin. 30 Eliz. In the Common Pleas.

CCCCXL. Beares Cafe.

Ma Formedon by Beare, the Defendant pleaded in Bar a warranty formed with Affets: And upon the Issue nothing by descent, it was found, That the Ancestor of the Defendant whose warranty was pleaded in Bar, was seised of Land in the nature of Gavelkind, and by his Will Bar. devised the same to his two Sons (whereof the Defendant was the Clock) and their heirs equally between them to be divided; and it was adjudged no Affets, wherefoze the Defendant had Judgment to have feinn of the Land.

Pasch. 30 Eliz. In the Kings Bench.

CCCCXLI. Austin and Smiths Case.

The Case was, That Austin being a Copyholder by License of the Copyholder Lozd leased his Copyhold to Smith for years, rendring rent, and of Grants. acceptances by Deed granted the rent to another, to have during the Cetm, ac. to which Grant the Lesse did attorn, and paid the Kent to Rents. the Grantee: It was holden by Gawdy Justice, That the Grant was 1 Cro.637.651.895. good, but now it is but a Rent-leck: And it was said by some, That 1 Koll.598. the Lessor cannot surrender such a Kent, unless he surrender the Re-1 last.317.40 betsion also. Quærc, if the Grantee may have an Action of Debt for it. Litt.151.b. It was concessor he could not. for he is not narry nor print to the 1524. It was conceived he could not, for he is not party nor privy to the 1524. Contract, noz hath the Revertion.

S 5 1

#### Pasch. 31 Eliz. In the Kings Bench.

#### CCCCXLII. Underhill and Savages Cafe.

Pluralities.

**Frohibition** 

Avage was presented to a Benefice, and afterwards was presented to another, and then purchased a Dispensation. (which was too inte) and then was qualified, and afterwards accepted the Archdeaconty of Glouceker: And Underhill who had the Archdeaconty libelled in the Spiritual Court against the kind Savage, where it is holden that all Ecclesiastical Promotions in such cases are bodd, and now Savage lied a Prohibition. It was argued by Arkinson, That the Prohibition of live, for the Patron bath his remedy by our Law, by a Writ of Right of Advolution. See 29 E. 3.44. If Advolution by Deprivation, and the next Presentment come in greation, it shall be determined by the kings Court; and here when he accepted of anather Benefice, it is cention by the Common Law, but there ought to the Benefice, but now there needs not any Semience, so by the Statute of 21 H.8.12, the Church is isso safe bodd. But it was objected, An Archdeaconry is not within the Statute, so it is not any Ture with Souls: also an Archdeaconry is a late Promotion, and therefore it cannot be void by the Statute. Lewknor contra. The Patronage here both not come in debate; but if the Defendant in the Spiritual Court will plead. That the Plaintist is not Patron, but such an one, then a Prohibition lifeth: withat the Justices granted, and it was safed by Wray, That a Doctor of the civil Law had been with him, and affirmed to him that their Law is, Chat if one having a Benefice with cure of Souls accepts an Archdeaconry, the Archdeaconry is both; but he said, That he conceived that upon the Statute of 21 H.8. the Law is qualified by reason of a Proviso there, sail Provided that no Deanry, Archdeaconry, etc. be taken of complehended under the name of a Benefice, having Cure of Souls, in any Article above specified.

Archdeaconry.

### CCCCXLIII. Pasch. 30 Eliz. In the Kings Bench.

Avini

Me was bounden to fland to the award of two Arbitratozs, who award that the party shall pay unto a stranger of his assigns 2001. before such a day, the stranger before the day dieth, and B. takes Letters of Administration; and if the Obligoz shall pay the mony to the Administratoz, of that the Obligoz should be discharged was the Auction; and it was the opinion of the whole Court, that the mony should be paid to the Administratoz, for he is Assignee: and by Gawdy Justice, It the word Assignee had been lest out, pet the payment ought to be made to the Administratoz, quod Coke assirmavic.

### CCCCXLIV. Pafch.30 Eliz. In the Kings Bench.

Steward.

Me fued in the Kings Bench for Colls given upon a Suit depending in the Hundred Court, and the fum of the Colls was under for and the Plaintiff declated. That at the Court holden before the Steward, secundum consucudinem Manerii prædict. It was objected, that the Steward is not Judge in luch Court, but the Suitors; to which it was answered by the Judge, and to it bath been holden; and here the Plaintiff hath vectored upon the Cultom, for the Declaration is secund consucudinem Manerii, also the Subject number for a lesset turn than 40 s. as if 10 s. Cults be given in any Suit here, Suit to surh costs lieth here in this Court.

Mich.

Mich. 30 & 31. Eliz. In the Kings Bench.

CCCCXLV. Pigot and Harringtons Cafe.

Pleathought a wort of Error upon a fine levied by him within age, error. The Cale was, That the busband and Chife were Cenaris for Me, and the Alemannoer to the Infant in fee, and they three kevied a fine, and the Infant only drought the Calent of Error. It was objected by Tanfield, that they all three ought to joyn in this Calit, and the busband and Chife ought to be humanoed and tevered. Ackinson contrary for her the husband and Chife bade not any cause of action, but the Infant only is grieved by the fine, 3t H-6.19, 20,21, &c. In conspiracy against many, it was found for the Polaintist, and one of the Defendants brought Attaint, and assigned the alignment of the false oath, as to the damages, and so the attaint well see. Two women are Loynt-tenants, they take busbands, the Dusbands and their Wiles make a feostment in fee, and so the attaint well see. Two women are Loynt-tenants, they take busbands by the Clives shall have several cois in vials, for these views busbands and their Wiles make a feostment in fee, and be the months, they have constitute of the other, 7 H.4, 122. In Appeal against sour, they were outlawed, and two of them brought cero, upon it, and mod, 29 E.1.14. In Assessment, &c. all found that two of them were districts and tenants, and that the following has the other bade by Baillis, all tenent de Franksenement, &c. all found that two of them were districts and Ecnants, and that the third had not thing, and afterwards so the three Covarceners broughts attaint, and after appearance, the thirth Silter who was around the frine, and that the could be supply that the call be several, yet the error of the silter who have a supply that the call be several, yet the error was a supply and the free pushand and Calife shall be summoned and severed, and it is not like to the cale of 29 E.3. Other because has passed as a supply to the fine, and then the Front is not assigned in the Record, but without it in the person of the Insant, and that is the cause of the Action by him Fracupon an and for no other

Mich. 30 & 31. Eliz. In the Kings Bench.

CCCCXLVI. Scovell and Cavels Cafe.

In Ejectione firms by Scovell against Cavel, the Declaration was gene. Leafer tal upon a Leafe made by William Pain, and it was found by spectal verbiet, Ehat William Leversedge was seised of the Lands, &c. and leafed the same to Stephen Cavel, John Cavel, and William Pain, habend to them for their lives and for the life of the survivor of them; Drobtoed always, and it was covenanted, granted and agreed betwirt the parties, that the safe John Cavel, and William Pain, should not take any benefit, profit or commodity of the Land, during the life of Stephen Cavel, and surther that the safe William Pain should not take any benefit, &c. during the life of John Cavel, &c. Stephen Cavel died, John Cavel entred, and afterwards William Pain entred, and made the Leafe to the Plaintiff, upon whom the Describant entred, and made the Leafe to the Plaintiff, upon whom the Describant entred, and safe entry of William Pain were squall was the Duestion.

Gawdy Deriant, his Entry is not lawful. It will be agreed, Chat if a man leafe to three for their lives, they are Joynt-tenants, but if by the habendum the eflate be limited to them by way of Kemainder, the joynt effate in the Dremifes is gone, and the Land demifed half go in Remainder; and I agree that in deeds Poll, the words shall be taken strong against the grantor, contrary in the Case of Indentures, the words there shall be taken according to the intent of the parties, for there the words are the words of both: See Browning and Beestons Case 2 and 3. Ma. Plowd. 132. where by Indenture the Lessee covenanted to render and pay for the Land Leased such a Rent, the same is a god reservation, although it be not by apt words, and here in our Case, this Production and Covenant, Grant and Agreement both amount to such a similation by way of Remainder, especially when such a clause followeth immediately after the Habendum. Coke contrary: The Office of the Habendum is to is mit and explain the estate contained in the premises, and here the Habendum bath done its Office, and make it a joynt estate, and there the Habendum hath done its Office, and make it a joynt estate, and there the Habendum hath done its Office, and make it a joynt estate, and there the Habendum hath done its Office, and make it a joynt estate, and there the Habendum hath one its Office, but perhaps an action of Covenant lies upon it. Wray, It bath been by me adjudged, if a Lease to three Habendum is no book, as to such purpose, but perhaps an action of Covenant lies upon it. Wray, It bath been by me adjudged, if a Lease are joynt, so and the clause following, is contrary to the Habendum, and repugnant, and so book, as to the violoing of the estate by way of Remainder, which Gawdy Justice granted Heale Serjeant, this case hath been adjudged, if a lease to these Habendum, and the technical solution, the lesseed with 
Mich. 30 & 31. Eliz. In the Kings Bench.
CCCCXLVII. Hudson and Leighs Case.

Appeal of Maheim, 4 Co.43.

Robert Hudson brought an appeal of Mayhem against Robert Leigh soft masming his right hand, and socutting of his beins and sinews, which by that means are become dry, so as thereby he hath lost the use of his singers. To which the Defendant pleaded, that heretosoe the Plaintist had brought against him an Action of Assault and Battery, and wounding, and therein had Judgment to recover, and Execution was sued south by Scire sacias, and satisfaction acknowledged upon secord, of 200 Agarks assisted by the Jury soft he damages, and 11 l.10 s.de incremento by the Court, with averment of all scentities. Cooper Serieant, the same is a good Bar, and although that an Appeal, and an Action of Trespals are diverse Actions in nature, and in many circumstances, yet as to the recovery of Damages, the one shall bind the other, See 38 E.3.17. a good case. In Trespals soft breaking of his Close and Battery, the Defendant pleaded, that before that the Plaintist by Bill in the Warshaller hath tecovered his Damages for the

Damages.

fame Trefpals,&c. and vouched the Aecozo, and the Aecozo was fent, the which was varying from the Aecozo pleaded; for the Record vouthed, was only of Battery without any thing of breaking of the Clofe; and also the Battery is taxed at another day, &c. and with averment; pet as to the Battery it was holden good enough with averment, and as to the breaking of the Close the Plaintiff had Judgment, See 41 E3, brev. 548.12 R.2. Corone 110. and the Case betwirt Rider Plaintist and Cobham Defendant, Pasch, 19 Eliz. Rot. 74. it was clearly holden and abjudged, that after a Recovery in Trespass an Appeal of Maheim doth not lie; and the Book which deceives the Plaintiff is 12 E. 3.82. where it is faid by Thorp, Chat notwithstanding Aecovery in Appeal of Maheim, pet he may after recover in Crespals, but Non dicite contra. Popham contrary, the Plea in Bar is not goo, for the Averment is , that the firoke and the wounding supposed in the Witt of Crespass, and in his Appeal of Makeim are all one, but it is not averred that any bamages were given for the Makeim, or that the Makeim was given in Evidence; for it might be, that there was not any Maheim when the Trespass was brought, but that after by the drying of the wound it became a Maheim, and then the Action did rife; as it a man upon a Contract promifeth to pay me 10.1. at Michaelmas, and other 10.1. at Christmas, if he doth not pay the 10 l. at Michaelmas, I may have an Action upon the promile for the not payment of that 10 1. and afterwards I may have another Action and recover damages for the not payment of the 10 l.at Christmas, but if I do not begin any Action before Christmas, I cannot recover damages but once, for the whole promile, and damages shall be given in E-bidence; and if I be discipled, I may recover damages for the first Entry, and notwithstanding that I shall have an Assie, and if I do reenter. I shall have a recover damages for the magnetic that I shall have an assistance. ter, I shall have Trespals and recover damages for the mean profits, And 302. and the damages recovered for the first Entry shall be recouped; and the Bok cited befuze Firz. Corona 1 10, both not make forthe Defendant, but rather for the Plaintiff, forthere it is averred, that the Makeim was given in Evidence, in the Action of Crespals, which it is not in our Cale. Egerton Solicitor, we have the wed, Chat succisio venarum, in this appeal specified is eadem succisio & vulneratio mentioned in the Trespals. Coke, Although the identity of the wounding and cutting of the being are aberred, pet it is not aberred, that the damages recovered in the Creipals were given for this Maheim. Wray chief Juffice, The Jurors are to take confideration of the wound in an action of Trespais, and to give damages according to the hurt, and we ought to think that they have none accordingly, and if they have not to done, the party may pray that the Courtby inspection would adjudge upon it, and so increate the damages : But now when the Jury hath given great damages, sil. 200 Warks, with which the party gath been contented, it should be hard to give the Plaintist another Action, and if there be any such special matter, that it was not become a Maheim at the time of the Action of Crespals brought, but it is become a Maheim of later time by drying, the Plaintiff ought to have the wed the lame to the Court, and so have helped himself, to otherwise it shall not be so intended, but that the averment made by the Desendant, is god enough to ous the Plaintist of this Actions and the Judgment cited 19 Eliz. befoze, was given by me, after I was constituted chief Justice, and this Bar as I conceive was drawn out of the pleading in 19 Eliz. and afterwards Judgment was given against the Plaintist.

#### CCCCXLVIII. Crofman and Reads Cafe.

Intermarriage 1 Cro. 1 14.

be Cafe was, that I.S. made his wife his Executric and dyed. I. D. Libering then endebted to the Cellatorin fixty pounds upon a fimple Contract, the Cilie Erecutrix took to bushand the faid I.D. I.D. made his Executor and dyed, Aceditor of I.S. brought an Acion of Debt an acing the Cilife Executric of I.S. and upon the pleading, the matter in question was. If by the entermatriage of the wife with the Debtor of the Cestator, the same was a Devaluarior not: And if the late Debt of sixty pounds due by l. D. Hould be Affets in her hands: And per Curiam, It is no Devalurit, not Affets, as is happoled: Forthe woman may have an Action against the Erecutor of I.D. And it was agreed by the Court, that is a man makes his Debtor and a stranger his Erecutors, and the Debtor dieth, the surviving Erecutor map have an Action of bebt against the Executor of the Debtor; and so it was adjudged in the principal cote.

Debt by Executors.

Mich. 31 & 32 Eliz. In the Kings Bench.

#### CCCCXLIX. Wollman and Fies Cafe.

Affumplit. r Cro. 179.

In an Action upon the Cale upon Assumptive that the Plaintiss should enjoy such Lands for so many years: The Defendant pleaded the Statute of 13 & 14 Eliz. because the Land is the Glebe Land of such a Parlonage, and in truth the Defendant did mistrecite the Statute: for the Statute is, No Teale after the fifteenth day of May: And the pleading is hereafter to be made) Secondly, the Statute is of any Benefice with cure (the pleading is of any Benefice:) Chirdly, The Statute is, without ablence above eighty, and the pleading is (without ablence by the space of eighty) days: And for these Caules the Plaintiff had Indament.

Trin. 31 Eliz. In the Kings Bench.

CCCCL. Frond and Batts Cafe.

Debt. Payment to the wife not good.

192 deht upon a Bond upon condition to fland to the Award of I.S. The Defendant pleaded. That the fair I.S. had Arbitrated, that the Defendant should pay to the Plaintist ten pounds, and he faid he had paid it to the Plaintists wife who received it, upon which the Plaintist did bemur; And Judgment was given for the Plaintist.

CCCCLI. Trin. 31 Eliz. In the Kings Bench.

Grants of the King of the Office of Marshal of the Kings Bench.

The Ducen granted to George Eatl of Shrewsbury, An. 15. of het reign, the Office of Earl Warthal of England, and now came the late Eatl and prayed, that I. S. one of his Servants, to whom he had granted the Office of Warthal of the Kings Bench might be to it, because the Office of Harshal of the Kings Bench might be to it, because the same is an Office incident to his Office, and in his power to grant, and that Knowles, to whom the Queen had granted the said Office of Harshal of the Kings Bench by the Attainder of North. he removed: And a Archant was said to the Attainder of North. be removed: And a President was shewed 14& 15 Eliz. Betwirt Gawdy and Verney, where it was agreed, That the

faid office was a leveral office from the law great office, and not incient to it; And as to the Cale of 39 H.6. 33,34 the truth is, the law office of Parthal of the Kings Bench was granted express by the Duke by express words, and so he had it not as incident to his office of Marhal of England: On the other live, there were three Presidents shewed, first in the time of E. 2. Chatthe office of the Marshal of the Kings Bench was appendant to the said office of Aparthal of England: Secondly, 8R. 2. When the faid great office was in the King, he granted the faid office of Marthal of the King Bench: But 20 R. 2. both offices were rejoyned as they were before in ancient time, and there were also hewed Latters Patents of 4 E. 4. and 19 H. 8. by which it appeared, That the laid inferiour office had time out of mind been part of the great office; and it was moved. That when the laid great office is in the Kings hands, and the King grants the laid under office, if nowthis office be not severed from the great office for ever. Wray, It is no feverance, for the chief office is an office of Dignity, which may remain in the king, but this under office is an office of necessity, and the king himselfcannot execute it, by which of necessity he ought to grant it. Another matter was moved, If the Grant of the king unto the Earl of Shrewsbury were good, because in it the Grant to Verney of the said under office, is not recited according to the Statute of 6 H.8.9. As 16 E. 3.60. The King seited of the Honor of Pickring, to which a Forrest was appendant, the Bayliwick of which Forrest he granted in see rendring tent, and afterwards he granted the Honor with Appurtenances, and afterwards the Bailist committed a Forseiture, and that was found in Exre, the Grantee of the Honor shall seite it, yet the King shall have the Kent: And here the Earl of Shrewsbury shall have the softe in his power to grant. And so much the rather because it was granted but so the er to grant; and so much the rather because it was granted but for life.

Trin.31 Eliz. In the Kings Bench.

### CCCCLII. Michill and Hores Cafe.

Ichil did affirm a Plaint in the Court of the City of Exeter a. Attachment of M gainst Hore for twenty pounds, and upon Nihil returned, it was good by culutmiced; That Trosse had certain monies in his hands due to Hore, and from of Exerc. according to the custom of Exeter the lato monies were attached in the hands of Troffe, who appeared upon the Attachment, and pleaded, That he owed nothing to Hore, upon which there was a Demutrer, and Judg-ment given against Trosse because that Trosse ought to have pleaded, Error not only that he owed him nothing, but further that he had not any gods of Hores in his hands: And thereupon Troffe brought a Writ of Erroz, and assigned the Erroz in the principal matter, upon which it was demurred, and Judgment given against the Plaintist, because that the Plea of Trose (that he owed him nothing) is good enough, for if there be not a Debt, it is not attachable upon luch Attachment: and it is a good Plea to a common intent, and altogether in use in London, where such custom is: Another Erroz was assigned, for that Michill had recovered Costs against Trosse, where it ought not to be: And allo Judgment is not given, that Trosse should be discharged against Hore; And afterwards the Judgment given in Execer was reverted.

Mich. 30 & 31 Eliz. In the Common Pleas.

CCCCLIII. Dennis and Saint Johns Case.

Debt. 1 Cro.494.

Mon eft faltum.

In Debt upon an Obligation, against Oliver Saint John, and Alice his wife, as heir of her father: The Defendants pleaded, Non eff fatour or the Father: And it was found by thectal Actour. That the Obligation was made by the Father of the Wife to the Plaintist and another, whereas in truth, The Plaintist bath beclared upon an Obligation made to himself only without speaking of any other joynt Obligee, and that the Oblaintist as Survivor hat brought the Action, and it upon the mate ter sthall be soon the Deed of the Defendant in manner as the Plaintish by the Clared, the Aury refer unto the Court: And the case, 14 E.4.1.b. If three enseoss me, and I plead, That two did enseoss me and the lame be tradered, it shall be found against me, soothe Feostment is a joynt and by them all: But if a man enseosseth me and two others, and the pyelo as I have all by Survivor, in pleading Imay shew the Feostment was made to me alone: So 46 E. 3. 17. a. Three Joynt tenants release to the third, who byings an Action of Wall against the Lesse, and the Mair was, That he held of his Lease only and the Wife usa awared good. Walmeley, This Plead is Respective as to the Obligation, but generally Nonels factum sum, which refers to the Obligation, but generally. Nonels factum sum, which refers to the Obligation, but generally whether he made the Deed to the Plaintist of not, but generally whether he made the Deed to the Plaintist of not, but generally whether he made the Deed to the Plaintist of not, but generally whether he made the Deed to the Plaintist of not, but generally whether he made the Deed to the Plaintist of not, but generally whether he made the Deed to the Plaintist of not, but generally whether he made the Debigge, so if the Obligee bea Youk, and there is another who bears the name of the Obligo, there Nonels sackum, is a good Plea: And se 10 Eliy. Dyer, 279. W. S. was bound in an Obligation to one the Who the name of W. S. and he pleaded Nonels sackum, alld the speak who he had none of S. and upon that Obligation an Actio

Hill. 31. Eliz. Rot. 1428 In the Common Pleas.

CCCCLIV. Willis and Whitewoods Case.

Leafes. Ow. 45.56. Hutt. 105. Ant. 158. Surrenders. The case was, That A. was seised of certain Landsholden in Socage, and leased the same to 1.5. for many years, and dyed, his her within the age of sourteen years, the wife of A. being Suardian in Socage leased the same Land by Indenture to the same Is. for years, if the first Lease was surrended, or determined was the Question: Anderson, Surrended it cannot be, for the Guardian hath not any Reversion capable of a Surrender, but only an Authority given to her by the Law to take the profits to the use of the Heir: But yet perhaps it is determined by consequence and operation of Law: As if A. scale to B. for one hundred years, and afterwards granteth the

the Aeveriion to C.foztwo-years, who leafeth to B.foz two years, who accepts the Leale, the lame is not any Surrender, for a term of one Ante. 303-hundred years cannot be drowned in a Aeversion for two years yet the first Leale is betermined which Periam granted 2 And by Windham 3 Af a Leafe be made to begin at Michaelmas, and before that time, the Leffor makes a new Leafe to the same Leffee to begin presently, the same is not any Surrender, and pet thereby the first Leafe is determined, and so in the principal case, which Anderson granted, but Periam doubted of it; and he said, Guardian in Socage hath such an estate in the Neversion that he may enter so a conditionbroken: Anderson, The same is not in respect of any estate that he hath, but in the name and right of the beir, and not by reason of any Revertion.

Trin. 31 Eliz. In the common Pleas.

OCCCLV. Norwood and Dennis Cafe.

In a Quare Impedit by Norwood against Dennis, the Mile was, If the Ad-Quare Impedit.

I bowfon was appendant to the Manoz of D.oz in gross, and the Jury I bowton was appendant to the Adam of the first and the furty with that it was appendant, and further found; that the Augendan right, and title to prefent, for the had prefented at the two last Adambances. Anderson and Periam Justices, Is it appeareth unto the Court upon the pleading, that the king hath title to present. The Court shall award a Writt to the Bishop so the king, but here appeareth no title so the the Augen upon the pleading, but only upon the second the sure have some part of the other may answer to it: And because the Jury have found for the Plaintiff, the title found for the Queen hall not be respected , but as a meer Augation and Surplulage, for the same was out of their Mue, and their Charge, and it is no more then if one comes into the Court, and informs us of any title for the Aueen, there the Later ought not to regard it.

Trin. 31 Eliz. In the Common Pleas.

CCCLVI. Green and the Hundred of Buccle-churches Cafe.

In an Action upon the Statute of buy and Ery, the Cale was, That Action upon Green did deliber a certain lum of money to a Cartyer, who put the the Statute of lume (amongst other things) in his Cart, and sent a boy of the age of twelve years with the Cart before, and he himself stayed a sort time in the Jun, and afterwards went his way, and before he could get to the Cart, the Cart was robbed and the money carryed away. The boy made duy and Cry, and came unto a Justice of Peace, and prayed he would cramine him, but he would not, but the Carryer himself would not go to be examined, wherefore Green himself went to a Justice of Peace to be examined, and so was, and afterwards brought this Action: And it was holden by the Court; that here the Plaintist had sailed of his Action so want of sufficient examination, so the Decrean who was robbed ought to be examined, and the examination of the Baster or Dwncr of the gods who was not present at the Robbery is not at any purpose to enable the Plaintist to this Action, so the party robbed ought to be cramined: And it was said by iome, Chat where an Action dothat the upon the new Statute of 27 Eliz, the party may have an Action upon the upon the new Statute of 27 Eliz the party may have an Action upon the old Statute, but others were against it, for the Statute of 27 Elizis in the Wegative, so as if the Action both not the upon it, no Action weth at all: And it was moved by Periam and Anderson, Chat the Plaintiff might have an Action upon his Case framed upon the said Statute of 27 Elizagainst the Justice of Peace who resuled to examine the boy: Tt 2

But Windham doubted of it, because the Justice of Peace is a Judge of Record, and for such thing as he doth as Judge, no Action lieth: Co which it was answered by Periam and Ancerton, Chat the Cramination in such case is not made by him as Judge or Justice of Peace, but as a Pinister appointed so, the examination by the Statute, &c.

Trin. 31 Eliz. In the Common Pleas.

CCCCLVII. Stevinson Case.

Debt

In Debt upon a Bond, the Condition was, That whereas the Plaintiff had covenanted with the Defendant, that it hould be lawful for the Defendant to cut down god for fire-box and bedge-box without making any was, or cutting more than necessary: And the Plaintiffastigned the dreach in that Covenant (which is in truth the Covenant of the Plaintiff) that the Defendant had committed wast in felling wood, &c. And the Condition was to perform all Covenants and Agreements: And Exception was taken because that the Condition ought to extend but unto Covenants to be performed on the part of the Lesses, but the Exception was not allowed, for it is the Agreement of the Lesses, although it be the Covenant of the Lesso, although it be the Covenant of the Lesso, although it be the Covenant of the Lesso, the Plaintiff.

Trin. 31 Eliz. In the Kings Bench.

CCCLVIII. Foster and Wilson against Mapes.

Covenant. Ow. 100. 1 Cro,212. Poster and Wilson brought an action of Cobenant against Mapes, and beclared, That by certain Indentures of Articles, it was agreed betwirt the Plaintiss and the Defendant, whereof one part was sealed with the seals of the Defendant, and the other with the seals of the Plaintiss, that whereas the Defendant had leased to the Plaintiss the Parlonage of B, he covenanted, That he would keep the Plaintiss barmlets concerning the same against one N.B.: And that at the time of the Matthe said N.B. had entred upon them; And that at the time of the making of the Indentures, he was Parson of B. The Defendant had pleaded Non est sadum, and it was found by special Across, That the Defendant sealed one part of the Indentures, and that one of the Plaintiss only sealed the other part: Exception was taken to the Declaration because there is not set south in it any sufficient deach, so when the Defendant Covenants to lave the Plaintiss harmless against B, the same is to be intended of a lawful Evision: As in Puttenhams Case, 1; Eliz. Dyer, 306. But if the Covenant had been, That the Acsis should peaceably enjoy the Term, sine ejectione & interruptione alicujus persone, upon an unlawful entry of a wyong doer, an action lieth: See 16 Eliz. Dyer, 328. And here the sinding of N.B. to be Parson at the time is to no purpose: And there is not layed any expects title in N.B. but only by implication, for it might be that the Parson had leased to the Defendant rending Kent with clause of re-entry, and the Parson had entred so the Condition broken, and the Plaintiss ought to have shewed, and not generally, that he had entred, and that he was Parson: Also it is sayed, That N. B. was Parson at the time of the Entry, but it is not shewed, what Entry, which may be taken, that he was Parson at the time the Plaintiss entred by birtue of their Plaintiss have not declared, Chat they had entred by socce of the Lease as of oreside.

afozesatd, and if not, then they cannot be ejected, ec. and then no breach of Covenant. Pudsey contrary. The have declared, that the Parsonage was demised to us, and that N. B. being Parson hath entred; and the Aecozd was read. i. That where the Defendant had demised to the Plaintists the Parsonage of B. It was agreed, That the Defendant always should keep harmless the Plaintists and the Premises against N.B. for and concerning omnibus pertincis, &c. Tansield, The breach is well laid, and the words of the Covenants amount to as much, as if he had said, that he mould been them. if he had faid, that he would keep them from all interruption; and the difference is, when the Covenant is general, keep harmless, ac. the same both not extend but to a lawful interruption; but when it the same both not extend but to a sawful interruption; but when it is special against such an one, there it extends to any interruption whatsoever. Gawdy Justice conceived, That the breach of Covenant is well laid, i. that N. B. hath entred upon them, and removed them, and be it by wrong or by right, the same is a breach, so he hath not kept harmless the Plaintists for the premises and profits of them, against N.B.2 E.4.15. A Bond was endoyed upon condition, That the Odligor should betend to the Odligee for such a time, such Landwhere of he had before enseossed him; It was holden, Chat if a stranger outleth the Odligee, without any Title, the Bond is softeized by reason of the word (Defend,) and although the Plaintists have not laid in their Declaration, that they have entred, the same is not material; so it is not the point of the action. Fenner Justice conceived, That the difference put at the Bar betwirt general Covenant and special, is good Law, and that in case of such a special Covenant interruption without Title gives an Action: but he conceived, that because it is not alledged that the Plaintists had entred, that there was no dreach of Covenant. See 9 Eliz. Dyer 257. Wray, The words of the Covenant do amount to peaceable emoring during the Term, and so to an inor Covenant. See 9 Eliz. Dyer 257. Wray, The wolds of the Covenant bo amount to peaceable emoting during the Term, and so to an interruption without Title. Fenner, 18 E.4.27. A. is bound to B. to save B. harmless from an Obligation made by the Plaintist to one R. if R. assirm a plaint of Debt against the said Plaintist upon the said Bond, the Bond of A. is folieit; but here the Plaintists cannot be harmed, for they have not entred. Gawdy, The conclusion of the Declaration is, That N.B. entred upon the profits and removed them, so as they could not take the profits thereof; so it is implied, that the Plaintists than entred, and aftermarks Indoment was given for the Plaintist. had entred, and afterwards Judgment was given for the Plaintiff.

Trin. 31 Eliz. In the Kings Bench.

#### CCCLIX. Marshes Cafe.

Mark, Erecutor of one Nicholfon, brought a Artit of Error to Error by Executor, affigned was plain; but it was moved, that this Carit of Error error would not live. Gawdy, The Action will well live, for by this Suit tainder of the plaintiff intends to reverle, and so undo the Dutlawry, for which owen Rep. 147. Cause this matter ought not to be objected against him, for the Erecutor. tor may have this Action as well as the Heir. Fenner Justice, Where the principal reverleth the Attainder, the same shall extend to the Accessory. In Assic against Tenant and dissellor, each of them may have a Writ of Erroz, and the revertal by the one thall make both the Accord as to both, and he needs not any Garnithment, for by intendment the King is to have all his goods, and the King is always prefumed prefent in this Court, quod tota Curia concessit; and therefore there needs not any Garnishment by Scire sacias; but Wray said, we use in such cases to call the Account General of the Ling to know if in such cases to call the Attorney General of the king to know if be can say any thing wherefore the Dutlawry should not be reversed.

The Erroz affigned was, That the Erigent inued forth into London and the Sheriff returned, that he had proclaimed the party de Com. in Com. quousque, &c. where he ought say, de Hustingo in Hustingum, and that was holden by the Court clearly to be Erroz; and afterwards at another day it was moved by Coke, That a man attainted of Felony could not make Erecutors, for he is dead in Law, and as Bracton faith, folus Deus facit Hæredes & homo nominat Executores, and therefoze the heir only thall have a Wirit of Erroz also an Executoz cannot have a Wirit of Erroz, but only upon a Judgment given in a perfonal Acion; but this Attainder is a thing of a higher nature: as where a Woman poyloneth her Pusband, the Peir thall not have an Appeal, for Aucder is changed into Treason, and that offence is a thing of a higher nature; so this Attainder is of a higher nature than in the personalty, Also it may be mischievous to the Peir, so the Crecutor may forth with bring and pursue his Writ of Erroz, by which the Iudgment shall be affirmed, and so the right of the Peir shall be bound; also when Erroz is brought to reverse an Dutlaway of Felony, a Scire facias ought to be sued against the Lozds mediate and simmediate, which cannot be here at the Suit of the Creutors: also it may found by Frances of the Creators. it was found by Enquest of the Cozoner, that the Testatoz sugam secit, so that thereby if he had been acquitted, he shall lose his goods, and then the Executozs have not any reason to bying this curit of Erroz, but see 11 H. 4. Error 51. That Executozs shall have a curit of Erroz of an Dutlawy pronounced against their Testatoz, and if it be reverfed they thall have reflictation of the goods of the Testato; but it both not appear there that it was upon an Indiament of Felony. Alcham, As well the Executor as the Deir is a person able for to sue a Alcham, As well the Executor as the Here is a perion able tor to sue a constitute of Error in such case, as 13 E. 4 where a falle oath is given against one in Assis and vieth, the Ocie Hall have an Attaint for the Land, and the Executor in respect of the damages. Popham Attained Seneral, This Dutlawry is a real Judgment, therefore the Executor cannot have Error upon it. Wray, It is good that this case be considered, for it may be mischievous, for thereby the Executor shall about the Attainder against the King and the Lords. Fenner, That cannot be without a Scire scias. Gawdy, The Executors shall have this action; and as to that which hath been objected, that the party attainted cannot make Executors, the same is no reason, for the Executors do pretend that their Testator was not sawfully outlawed, and so by this Duit that their Cessator was not lawfully outlawed, and so by this Suit they do endeavour to take away that disability, and therefore it ought not to be objected against the Crecutor; and if the Case here be. That the Testatoz had not lands, but only gods, there is no reason but that the Executozs should have a Write of Erroz, otherwise the goods of the Testatoz should be lost; and it was clearly holden by Wray chief Justice, That the Executoz might have and pursue this Writes Erroz, the Dutlawzy of the Testatoz notwithstanding; and afterwards the Outlawy was reverted accordingly.

Trin. 31 Eliz. In the Kings Bench.

### CCCCLX. Truffels Cafe.

Habeas corpus.

Owen Rep. 69
Into the Kings Bench. Egerton, The Queens Solicitor moved a Gro.213, the Court, that Truffel was a person attained of Felony, and so had not any lands or goods to fatisfie; at. and also his life was not his own; and upon the Acturn of the Habeas corpus it appeared, that Truffel was betained in Prison for an Execution, and for other Actions; and Executions. It was the opinion of the Court, that as to the Execution he ought not Post 329, 330, to be discharged, sorther the party hould lose his best for ever; but as to the

the other actions, it was the opinion of all the Justices, that Trussel ought to be discharged of them; for a man so attainted ought not to be put to answer, nor taken in Execution, and so are all our Books; and they said that they had conferred with the Justices of the Common Pleas, and with the Barons of the Exchequer; which were of a contrary opinion in this case upon the very matter, and not upon the manner of the pleading; but yet we will discharge our Consciences as we have done, for there is not any Book against us, Egerton section from the sections. fuper semitas antiquas, and at laffit was awarded, Chat Truffel should be discharged of all Actions brought against him.

Trin. 31 Eliz. In the Kings Bench.

#### CCCCLXI. Sovers Cafe.

Cover and others were Indicted upon the Statute of 8 H.6. of forcible Indictments Oentry, because they had expulsed one A. out of his Land, and off upon the Sta leised the Mayor and Commonalty of London, who were in Repersion, tute of 8 H.s. and the same being removed hither, Restitution was prayed thereupon, and White for the City, who was in Reversion; and the Lessor prayed that no Aestitution might be, for they had let the House to another, and that he who had procured this Indiament claimed in by a Custom Restitution. of London, That the Erecutor of the last Termor should not be put Yelv.81. out, if he shall give as much for it as any other will, whereas in truth Dy.1.41,142. there is not any fuch Custom, and for that cause the Aestitution was stayed; and it was said by the Court, that Aestitution shall be always made to him in the Reversion, and not to the Lesse sor years, for he who is disselsed shall be restozed, and then the Lesse may re-enter.

Trin. 31 Eliz. In the Kings Bench.

#### CCCCLXII. Beal and Carters Cafe.

M an Action of falle Imprisonment, the Defendant justified because Palle Imprithe Plaintiff brought a Child of the age of fix years, and not as former. bove, into the Partin Church of W.& eundem ibidem relinquere voluisses, & Owen Rep. 98. intendisses, without keeping or nourishment, to the danger and destruction of the Child, & contra pacen, for which the Defendant being Constable of the said Partin arrested the Plaintiff, and put him in prison until he did agree and promise to carry the Child from whence it came, upon which the Plaintiff did demur in Law. It was moved, that the Justification was good, for every Subject might do it, a fortiori a Constable; and if in this case the Child, being so exposed, should be samished for want of nourishment it had been murder, as it was holden famished for want of nourishment it had been murder, as it was holden at Winchester before the Lord chief Baron, 20 Eliz. Another Exception was taken to the Plea, because he saith (quendam infantem) without naming him, and he ought to sap Quendam infantem ignorum; but that Antea 56. Exception was not allowed. Another Exception (ibidem relinquere intendifier) but he both not say, that he did depart from it, and then his meaning is not traversable, or thusble, or to be tried by Jurors. See 22 E-4-45. Gawdy Justice, It was a great offence in the Plaintist, but the same quent to be purified according to Lam, but the same quent to be purified according to Lam, but the same purified according to Lam. the same ought to be punished according to Law; but the Constable cannot impuson a Subject at his pleasure, but according to Law, i. to stay him and bring him before a Justice of the Peace to be there examined. Wray, If the Defendant had pleaded, that he stayed the Plaintiss upon that matter, to have brought him before a Justice of Peace, it had been a good Plea. Fennor, The justification had been good, if the

the Defendant had pleaded, that the Plaintiff refused to carry away the Child, so all the Justices were of opinion against the Plea; but they would not give Judgment by reason of the ill Example, but they left the parties to compound the matter.

Pasch. 33 Eliz. In the Kings Bench.

CCCCLXIII. Cole and Walles Cafe.

In an Ejectione Custodiæ the Plaintiff veclared, that A. was seised of the Manoz of D. within which Manoz are viverse Copyholds of inheritance; and that the Custom of the Manoz is, that if any Copyholder of Inheritance of the said Manoz vieth, his heir within the age of 14 years, that then the Lozd of the Manoz might grant the custody of his Body and Lands to whom he pleased; and thewed, that one Clevertie a Copyholder of Inheritance of the said Manoz died, his son and heir within the age of 14 years, upon which the Lozd of the Manoz died, his son noz committed the custody of his Body and Lands to the Plaintiff, and the Defendant did eight him, and upon Not quilty it was found and the Defendant did eject him, and upon Not guilty it was found for the Plaintiff. It was moved in arrest of Judgment, That this Action would not lye upon a Copyhold estate, Quod tota Curia concessifi; and yet it was said, that an Ejectione sirms lieth upon a demise of Copyhold Land, by Leake of a Copyholder himsels, but not upon a demise by the Lord of the Copyhold, Quod fair concessum; and afterwards the Case was moved on the Plaintiss spe, and it was said, That this was but an Action upon the Case, in the nature of an Ejectione firms, and this interest is not granted by Copy, but entred only into the Court Koll: so it is not an interest by Copy, but by the Common Caw, for the words are, Quod Dominus commist custodiam, &c. and both not say in Curis and afterwards Judgment was effect for the Maintiss not fay in Curia; and afterwards Judgment was given for the Plaintiff.

Trin.33 Eliz. In the Kings Bench.

CCCCLXIV. Bond and Bailes Case.

a Bond where fatisfied before a Statute. 2 Len. 3 70. Roll.926.

Ond brought a Scire facias against Bailes, Administrator of one T. B. Dupon a Recovery had against the Intestate in Action of Debt. The Defendant pleaded, Chat befoze the said Judgment given, the Testatoz old acknowledge a Statute Staple to one C and that the Son was not paid in the life of the Testatoz noz after, and that they have not in their hands any goods of the Intestate beyond what will fatisnot in their hands any goods of the Intellate beyond what will lativise the laid Statute; upon which there was a demurrer in Law. And Coke argued, Chat the Bar is not good, for here is not pleaded any Execution upon the Statute, and then the Judgment, the Statute being of things of as high nature; that of which Execution is sued thall be first served; and if this Action had been brought upon a Bond the Plea had not been good: for although that Brian saith, 21 E. 4. That Recognizances shall be paid by Executors before Bonds, yet that it is to be intended when a Scire sacias is to be sued upon it, others wise not: And A Hossias Scire sacias is to be sued upon it, others wise not: And A Hossias Scire sacias sugar and any missire had a missing the lates and a missing the lates any missing the lates any missing the lates and a Hossias said to be sued upon it, others wise not: And A Hossias Scire sacias said to be sued upon it, others wife not: And 4 H.6.8.in a Scire facias upon a Judgment fully administred at the day of the Mrit brought is a good Plea; by which it appeareth, That if the Executors had paid the Debt upon the Obligation before the Wirit brought, it had been good. See 12 E. 3. Executors 73 in a Scire facias upon a Judgment in Debt given against the Cestator, Enquiry shall be what goods the Executors had the day of the Scire facias. and he lato, it was moved by Anderson, 20 Eliz. in this Court. In Debt

upon a Bond against Executors; the Defendant pleaded, that the Tessator was indebted by Judgment to A and that they had not more than to satisfie the same, and it was holden no plea, is not that he pleaded further, that a Scire facias was sued upon it. Wray satu, The same is not Law, and there is a difference when the Judgment is given against the Tessator himself, and where against the Executors; for where Judgments are given against Executors, the Judgment which was given before shall be first executed; but if two Judgments be given against the Cestator, he who first sues Execution against the Executors shall be first satisfied, because they are things of equal nature, and before Duit it is in the election of the Executor which of them he will pay. See 9 E 4.12. As if two men have Callies out of the Exchequer, he which first offers his Cally to the Officer shall be sixtated by hur before that it is in the choice of the Officer which of these the Exchequer, he which first offers his Tally to the Officer wall be first paid; but before that, it is in the choice of the Officer which of them shall be first latisfied; and therefore 19 H.6. If the Lease envolved be toff, the Envolvent is not of any effect, and Paich 20 Educat very case was moved in the Common Pleas, in a Scire facial upon a Judgment given against the Testator; the Executor pleaded, Chat the Testator had acknowledged a Statute before not latisfied, Ultra que, &c. and it was holden no Plea, for a Statute is but a private and pothet Aecod, as they called it; and 32 Eliz. betwirt Conny and Barham the same Plea was Conny and pleaded, and holden no Plea. Also it this Plea should be allowed, great Barham Case. mischiefs would follow: for then no Debts should be satisfied by the Executors, for it might be that the Statute was made for performance of Covenants, which Covenants perhaps shall never be broken: and afterwards Judgment was given for the Plaintiss.

Trin. 32 Eliz. In the Kings Bench.

CCCCLXV. Crew and Bails Cafe.

A Mirit of Erroz was brought upon a Judgment given in the Erroz.

Common Pleas, in a Bill of priviledge brought by anattomey of the 2 Cro. 216.

lato Court upon an Obligation; and upon the lato Judgment issued forth process of Erecution, upon which the Defendant was Dutiamed; and the Erroz was assigned in this, That upon that Audyment process of Dutlaway dothnot lie, for Capias is not in the original action; Priviledge and to was the opinion of the whole Court, being upon a Bill of priviledge, and the Dutlaway was reverted, and the Erroz was assorbed biledge, and the Dutlawer was reverted, and the Erroz was affigued in the first Judgment, because there were not fifteen days betwirt the Teke of the Venire facius and the return of it; but that was not allowed, for it is belped by the Statute of 18 Eliz. cap. 14.

Trin. 30 Eliz. In the Kings Bench.

COOCLXVI. Wade and Presthalls Cale.

William Wade brought an Action of Debt ogainst Preshall; the Description, not restorated, and personned, and bemanded Judgment if he should be put to somet, upon which the Plaintist old beamer. It was argued too the Plaintist, that the Plea is not good, for the Description that not take benefit of his own wrong: A person attainted gives his goods, he shall plea in discount about it; A Comman takes a Husband, thereby she hath abated bet bility of himoun count it. It is true, That a person attainted is a dead man, it is isle not about on the state of the person attainted is a person attainted is ed.

Murdered, his wife shall have an Appeal, so as to all respects he is not EI H

not bead, and although as pet the Plaintiff cannot have any Erecution against the Defendant, pet here is a possibility to have Execution. if the Defendant get his pardon : As a man fhall have Warrantia Charte although he be not impleaded, and yet cannot have Execution, but there is a possibility to have Execution, 22E3 19. A Rent granted to one in fee upon condition, that if the Grantee Die, bis beir within age, that the sent thall cease during the nonage, the Grantee dieth, his heir within age, his Wife brought Dower presently and recovered, and yet the cannot have Execution, but yet there is a possibility to have Execution, viz. upon the full age of the heir. Coke contr. By his Attainder he hath viz, upon the full age of the heir. Coke contr. By his Attainder he hath lost his Gods, Lands, Life, Degree, for he is now become Terz filius, and he cannot draw blod from his father, nor associated blod to his Son or his posterity, so as he hath neither Ancestor nor beit; and as to the possibility the same is very remote, for the Law doth not intend that he shall be pardoned; and see 6 H.4 64. A man committed a Felony, and afterwards committed another Felony, and after is attainted of one of them, he shall not be put to answer to the other; but if he obtain his Charter of pardon, he shall answer to the other. See also to H.4.227 sit. Coronz. Popham Attorney General; The Defendant ought to answer, for none shall have advantage of his own wrong: The Plaintist is made a knight vendant the Write, it shall above because Plaintiff is made a knight pendant the Writ, it hall abate because his own Act; but here Creatons are to heinous, that none thall have eale, benefit, og bilcharge thereby: And if the Defendant thall not be put to answer until he hath his pardon, then the Action is now sufpended, and an Action personal once suspended is gone for ever; and he cited 29 E 3. 61. in the Bok of Asszes, where it is said by Sharp, Execution upon a Statute may be sued against a man attainted; and he fait, That if the Enemy of the King comes into England, and becomes bounden to a Subject in twenty pounds he thall be put to answer, not withstanding that interest that the King hathin him. Harris Serjeant to the same intent, he conceived by 33 H.6.1. Chat Traitors are to answer; foris Traitors break the Goal, the Goaler shall answer for answer; folis Craitols weak the Soai, the Soaist hair answer we their escape, forthe Soaier hath remedy against them, contrary of the Kings Enemies; and he cited the case of one Burcher, who being attainted of Creason struck another in the Tower, sol which notwith standing his Attainder he was put to answer. Egerton Solicitol Seneral: And he said, That the Action is not suspended; but in as much every action is used to recover a thing detained, of to satisfie a wrong, if it can appear that the party cannot be satisfied according to his case he shall not proceed: And in this case the Plaintist, if he should obtain Tudowent could not have Frecution by the Common Law. obtain Judgment could not have Execution by the Common Law, for he hath no Gods, nor by the Statute of Westen. 2. by Elegit, for he hath no Lands, nor by the Statute of 25 E. 3. by his body, for it is at the Kings pleasure, and then to what purpose shall the Plaintiss such it is a general Aule, Chat in all Actions where the thing demands ed cannot be had, of the person against whom the thing is demanded cannot yield the thing, that the Writishall abate: As in a Writ of Annuity by Stantee of an Annuity so years the term expirety, the Wirit shall abate: Cenant in special tail brings Wash, and pendant that that we would be with the Wirit shall abate. Alrit hall abate; Tenant in special fail brings Alast, and pendant the Writ his issue dieth, the Arit shall abate, ac. 2 E.4.1. A man Outlawed of Felony pleaded in disaffirmance of the Outlawry, and yet be was not put to answer until he had his pardon, and then he shall answer: And as to the Case of 33 H.6.1. It doth not appear that the Traitors were attainted, and then there is good remedy enough: And Burchers Case cannot be resembled to our Case, for although that by the Attainder the body of the party might be at the Kings pleasure, yet his body may be punished sof another offence, sof the example of athers. And as to Tressels Case, who in such case was put to answer, I grant it, sof he concluded Judgment if Acion, and so admitted him a

Execution against a person Attainted.

Burchets Cafe.

Ante 211.

Regula.

Abatement of

a person able to answer, and then it could not be a good plea in Bar. and in Ognels Cale, the Retoin of the Sherist shall bind them, for upon Process against a person attained they returned Cepi, where they ought to have returned the special matter without a Cepi, but now this general Acturn shall bind them, and by that he shall be concluded to say, that the party was not in Erecution: And this Plea is not any oscalar the Defendant; but he informs the Judges, that he is not a person able to answer to the Plaintist. As in a Præcipe quod wider the party pleans Bon-tenure, the same is no disabling of his reddat the party pleads Kon-tenure, the same is no disabling of his person, but a shewing to the Court that he cannot yield to the party his demand: A man shall not take advantage of his own wrong, in the same thing in which the wrong is supposed, or against him against whom the wrong is supposed to be done; but in other Cases he shall who appeared as his own wrong is supposed to the done; but in other Cases he shall who appeared as his own. whom the wrong is supposed to be done; but in other Tales he shall take advantage of his own wrong, as Littleton, If a Teale for life he made, the Remainder over in fee, and he in the Kemainder entreth Cases where a upon Tenant for life, and district him, the same is a good Seisin, man shall take upon which he may have a Witt of Kight, Littleton 112.35 E.3. Droit 30. advantage of and pet this Seisin was by wrong. And there was a Tale betwirt his own wrong. Marbery and Worral in the Exchequer, The Lesson entred upon his Lesson Marbery and sollife, made a feostment in fee with clause of Ke-entry, the Lesson Worrals Case: reentred, the Lesson at the day came upon the Land and demanded the Rent which was not paid; it was holden the same is a good demand of the Rent, and pet he is a Trespasson to the Lesse. And in the Rent which was not paid; it was holden the lame is a good demand of the Rent, and pet he is a Crespasso; to the Lessee. And in another Cale, A man hall take advantage of his own wrong, Fiz.N.B. 35.N. An Infant bath an Advancion by belient, the Church becomes boid, he who hath Kight paramount ulurps, and presents to the Church, and the 6 months pass; now by this tortious ulurpation he is remitted, and the Infant out of possession, and without remedy: And he cited the Cale 16 H.7.10. A scire facias out of a fine was brought against an about, by which fine the Predecesso of the Abbot granted to sind a Priest to sing Adas in such a Thannel, ac., and the Abbot pleader. Piest to sing Hals in such a Chappel, &c. and the Abbot pleaded, Chat the said Chappel was become rushous and decayed, so as no Piest could sing Wals there; and it was prayed on the part of the Plaintist, that sozalinuch as the Covenant is consessed, that Judgment be given, but that Execution hould ceale until the Chappel be rebuilt; but it was not allowed, for this is a good Bar for the time, and no Judgment hall be given, for it hall be in vain, for it cannot be crecuted because there is no Chappel, and it may be the Chappel hall never be built again: And so in the principal Cale, ic. It was advanced jozned.

Trin. 33 Eliz. In the Kings Bench.

CCCCLXVII. Knightley and Spencers Cafe.

IN a Prohibition betwirt Knightley and Spencer, The Case was, Chat Prohibition.
Ph. Abbot of Everham, and all his Predecessor time out of mind, c. More Rep. 518.
Were seised as well of the Rectory impropriate of B. in the County of Co. 47,48.
N. and also of the Manor of B. in the same Parish, ec. until the dissolution of his House; and that by reason thereof the saw Abbot and all the Predecessor had holden the said Apanor vischarged of payment of Cithes until the dissolution, ec. and shewed the branch of the Statute of 31 H.8. And that the said Abbot did surrender the Posessischer and the said Sport of the same bushas of the sawment of Cithes: and that the king held the same bushas afterwards the same Micharged of the payment of Cithes; and that afterwards the king granted unto the Ancestoz of Knightley the said Manoz, and to the Ancestoz of Knightley the said Manoz, and to the Ancestoz of Spencer the said Kectozy, and although the Plaintist ought de jure to hold the said Manoz discharged of Cithes, yet the Detendant sued him in the Spiritual Court, ac. To which the Defendant consessing

confessing the Impropriation, pleaded, That the said Abhot was seised, ut supra; but that before the making of the said Statute of 31 H. 8. the said Abbot demised Decima-Rectorize predict to one Spencer for 70 years, who made the Defendant his Executor, and died, and that at the time of the said Demise, and dissolution of the said Abby, one Goodman

Unity of polfession a difcharge of Tithes.

and others were possessed of the said Manoz until the year 1585. which was the year befoze the Suit began in the Spiritual Court, and that at the time of the dissolution he paid Cithes toz it, and now the Plaintiff refuseth to pap, et. absque hoc, That the Abbot and his Predecessors till refuleth to pap, at. absque hoc, That the Abbot and his Predecess held the said Banor quit of the payment of Tithes time out of mind, at. upon which the Plaintiss vid demur in Law. Coke, for the Plaintiss, That this Anity of possession is a discharge within the Statute of 3. H 8. the words of which are, That the king and his assigns shall have and enjoy the Lands discharged and acquitted of Tithes, as freely as the said Abbot held the same at the day of the discounting: And see before, whereas divers Abbots were acquitted and discharged of, and for the payment of Tithes; for the Statute doth not intend a real discharge, as by composition or such manner, which is not here, but only a suspension, which is not any discharge in Law; and ver in but only a suspension, which is not any discharge in Law; and pet in speaking of discharge ordinarily, an actual discharge is understood, as it I be bound by Obligation to discharge one of such a Bond, it is not enough to pay the mony, but I ought to procure an actual Discharge where it is put generally, but where it is put secondary quid, as it is here referred to the Discolution, a suspension is a Discharge intended in the said Statute; but where the Statute is indefinite there an actual Discharge is underfood, but restrained to a time a suspension actual Dicharge is understood, but reutained to a time a intennon fufficeth, and truly it is a discharge within the intent of the Statute; for if the Statute hall be intended of an absolute discharge, and a Discharge in Law only, the Statute had been superfluous, for the Law said to much before; for without such provision the King and his assigns held discharged from payment of Eithes. But the makers of the Statute knew well enough, that the Abbot might have such discharge by divers means, and it should be infinite for the party interested to enquire of them all; and therefore they did enast briefly. That is at the time of the dissipation they were in any manner freed of pay if at the time of the dissolution they were in any manner freed of payment of Cithes the same should be sufficient, and so here is not any wrong unto any, for the Parson had all as he had before, and the same is like to the case between Wharton and Morkey, 7 Eliz. in the Exchequer, the Report of which Dr. Plowden communicated unto me, and it was upon the Statute of 1 E.6.cap.14 of Monasteries, That all Crants made to the king by any Provosi, That a Prevent of the Church of York surrendred to the king, but the Surrender was never enrolled, and pet adjudged god upon the Statute; for if it was a lawful Surrender to the land by the Church of York surrender was never enrolled, and pet adjudged god upon the Statute; for if it was a lawful Surrender the Course by head because of the land to the land to the course of the land to t ber the same had been good of it felf, without any aid of the Statute, which was made to supply insufficient assurances, and so in our Case for the cause asoresand, and it should be injurious to drive the Jury to enquire of the manner of the Discharge, if it were by composition upon the foundation, or by dispensation of the Pope, as Cisterc. Templarii: And here the Plaintist hath declared of an Impropriation before time of memory; and so before the Council of Lateran, which was within those 400 years; and 25 Eliz. there was a Sussex Case, where the Plaintist neclared as here, but they mouth not proceed: and set Dree within those 400 years; and 25 Eliz. there was a Sullex Cate, where the Plaintiff veclared as here, but they would not proceed; and set Dyer 10 Eliz.277,278. The Prior of St. John hath priviledge from Rom, that he shall not pay Cithes so any Land quas propriis manibus aut sumptibul excolant, but their Farmers have paid Cithes; and it was holden, that in the hands of the Farmers Cithes should be paid, but after the Cerm ended the Patentee should hald offcharged, so as the Statute hath a savourable construction upon this point. Now it is to see,

Wharton and M.rleys Cafe.

if the Leafe of the Rectory by which the Defendants claim be good ex not, and then admitting that Cithes are due in this Cale, pet A his Leale be boid he hall not have a Consultation, especially it it appears eth upon his own thewing as it was holden in a Hampshire Cale betwice Sotton and Dowze, which fee Mich. 25 & 26 Eliz. and in that case the Lente Sutton and Souton and Dowze, which tee wich. 15% 26 Eur. and in that the the Leuie suites and is void, for it was made within a pear after the Statute of 3r.H. T. Dowzer Cafathe January before, and the Statute in April after, for he hath not aberty 2 Len. 55. red, that the udual Rent is referved, nor that the Land was naidly 3 Len. 155, let to tarm, for which Leales otherwise made within the year are absolutely void by the said Statute: But it will be objected, That this 1 Cro. 707, waster their same in an our part, and it is sufficient for them to plain and matter thall come in of our part, and it is lufficient tog them to plead 708. the Case; but it is not so, as it was lately agreed in Heydon Chie in Hyden Case. the Exchequer, where the Case was, Chat the Marven and Canons of the Colledge of Overy leased certain Lands to Heydon so penes, and he in pleading of his Lease did not shew that the antient Rent was referved, and therefore naught; and to was the opinion of the Junices of the Common Pieas, in the Cafe betwirt the Lord Cromwel and All-Sould Lord Cromwel Colledge, upon the Statute of 18 Eliz. cap. 6. upon a branch of it, by and All-Souls which it was provided, that the third part of the Kent referved upon Cafe. any Leafe Mould be paid in Com, ac. and the Leafes made to the contrary flouid be void; and in an Ejectione firms brought upon fich Leak, because it was not shewed in the Declaration, that the Com was referred according to the Statute, Judgment was arrested, and we need not to plead the Statute; for although the Statute be particular, pet because the King hath interest in it, it shall be holden in Law a general Act, and the Judges shall take notice of it, although it be not alledged by the party as it was ruled in the Lord Barcklays Cast. Elia. Plan 231. but if fuch Aent was referbed, pet the Leafe cannot be good, to the Ring cannot have his Aent, because it is not incident to the Aesection not passeth by the Stant of the Reversion; for it is not a Bent, but rather a sum due by reason of contract, which see 30As. A man leaders a hundred, rendring Kent, or grants a Rent out of a Dundred, the same is not a good Rent, but meerly void; for a hundred is not Walnowshie, nor can be put in view, nor any Asize lieth of such Kent. See 7 Co. 5.

9 Asize and in zo Elizin the Case betwite Corbet and Clear the Dean and Corbet and Chapter of Norwich leased a Parsonage and common of Passure, rent clear Case ding Bent, 1 E.6. they furrended their possessions to the king, and afterwards the king granted the Parlonage without speaking of the common of Passure. It was holden, that the Patentee of the Parlonage should have all the Rent, and no apportionment should be in respect of the Common; fozall the Kent issued out of the Patsonage, and nothing out of the Common: So here, for Cithes are not an 2 Ca 48. Deceditament, which cannot support a Kent within this Statute, for which cause the Lease is void: Also he said, that the traverse of the Octendant was not well taken, for the Passure status of the Out of mind, are the Abhot and his Inspeccations were selected the out of mind, ac. the Abbot and his Predecessors were lested of th fleury and Adano: aforefaid, fimul & femel, and ratione inde, was discharged, ac. at the time of the diffolution; the Defendant traverseth absque hoc, that the Abbot and his Prevenessing held but harged of Lithes time out of mind, ac. which is not good, so, he hath traversed our conclusion; for our plea is an argument, wherefore is unity time out of mind, ac. there is a discharge of Cithes, but in the Abbott was such an Unity, ergo he held discharged of Cithes, as 21 E 3.22. In a Pracipe quod redat, the Tenant safety, that the Land in demand is parcel of the Mando of D which is ancient Demess, and on demand is parcel of the Mando of D which is ancient Demess, and the same was not good, for he denies the conclusion; but he aught to plead to the nature of the Mando, that it is not ancient Demess, at the Landin demand is not parcel of it. Another matter was y because it is pleaded for in an account.

tenura & occupatione of Goodman and others; but he did not shew by what Title, Disseis of Lease, or other Title, &c. Buckley contrary, And he said, This unity of possession is not any discharge of Tithes by the said Statute; and as to the Case cited before, of 3 H. 7. 12. where Tenant in tail of a Kent entrethupon the Tenant of the Land, now is the Bent fulpended, and then after when he makes a feoffment in fee. the Nent lulpended, and then after when he makes a Feotiment in fee, by that feotiment the Rent is extinguished, which was but lulpended at the time of the feotiment; and therefore some have holden, that is after such Entry he makes a Lease for life of the Land, that his Kent or Seigniory is utterly gone in perpension, for by the Livery all passeth out of him, which he said cannot be Law; and so it seemed to Gawdy Justice, Then upon such feotiment with warranty he could not bouch as of Land vischarged of the Kent generally, but as of Land discharged at the time of the Feotiment, which proves that the suspension is not a pischarge. For it mas supended before the Feotiment, and discharges discharge, for it was suspended before the feostment, and discharged by the feostment, and is suspension is not a discharge, a fortior in the Case of Cithes, for in the case of Common, and Rent, although they are suspended to as they cannot be actually taken, yet they are to some intent in esse: As where Lands holden of other Lords are in the hands of the King for Primer seisin by reason of Prerogative, and during such seisin of the King the Lord gets seisin, the same is a good seisin not withstanding that it was suspended so as he could not distrain: And also in Affize of Land, damages as to the Rent out of the Land shall be recouped, therefore the rent in some fort is in effe, and a multo fortiori, this Cithe (which is a thing of common Right) shall be in effe, but goes with the Land, and therefore by unity of polletion thall not be suspended, nto the Land, the Warren is not suspended, not by Feosiment of the Land iserting; and in this Case upon the matter, during the unity of possession the Cithes were paid, although not inspecie: Also the Abbot bad the Cithes as Parson of B. and the Land as Abbot, and therefore no suspension, for the Cithes were always in ese, although not taken in the manner, as Cithes commonly are, but by way of Retainer, 22 E.444 A cart of Annuity is brought against a Prior, and it appeared, That the Prior and his Successors have used to pay the Annuity as Parson of D. and not as Priors, which Parsonage was appointed to the said Priory time out of mind, and in the Cart the Defendant was named Prior only, and not Parson, and therefore the Cart was abated. See 14 E.44. 10 H.7. 5. In an Action of Calast: So Bracebridges Case, 14 Eliz. Plowd. 420. The Case put by Cariline, If the Parson, Patron and Droinary make a Lease so years, and afterwards the Lesse becomes 35H.6 De who bath liberty of Warren in the Lands of another entreth Ordinary make a Lease for years, and afterwards the Lesse becomes there Incumbent, the Term is not ertina, so he has the Term in his own kight, and the inheritance in the kight of his Thurch, which see 30 H.8. Dyer 43. A Parlon purchaseth, and after leaseth his Parlonage, he himself shall pay Tithes notwithstanding this Inity; and as to the reason of the other side, That is such discharge of Tithes he not intended by the Statute, but only a Discharge in Law, the Statute should be in vain, the same is not so; so, if the Abbot had been discharged by way of Release or Composition, so, the Honor been supported by the Statute, and then the Kelease and Composition of no force, and the king should not take advantage of it but by this Statute; and as to Whartons Case before cited, the same cannot be Law, so, it hath been holden upon the Statute of 18 Eliz. of Confirmations, That if an Insant maketh a Lease to the king, the same is not made good by the Statute, for the said Statute extends to imperfections in circumstances, and not in substance. And although the Lease be not good, yet because the matter of the surmise is naught, although our Bar be naught, a Consultation ought to be

A Rent in effe to fome purpoles, and fufpended to other. be granted, alfo our Leafe is well pleaded, and if fuch befe a be in it, as hath been objected, the fame ought to come in by Plea on the other fide; and it is not like Heydons Cale, for there it was found by special Clerbin, and it is the that have furthered was in the Declaration, and so no ground of Action; as to the Craverse it is god enough, as if special Baltardy be pleaded against one born before the marriage, and so Bafard, the other party shall traverse generally the Bastardy, and not the special matter, but for the principal matter, this unity of possession, divergrules have been. 5 Eliz. in the Common Pleas, the Case was, An abbot had a Danoz within the Parish of D. and a Composition was made betwirt the Parson of D. and the laid Abbot, that the Parson housd have yearly certain Loads of Thod, out of thirty Acres of the said Manay, for, and in recompence of all the Cithes of Thod there, afterwards the Parsonage was appropriated to the said Abbot, and afterwards the house was disolved, and the Manay granted to one, and the Aectory to another, and it was holden. Chat the portion of the Cithes was removed, for he had them, scil. The Manozand the Tithes in several Rights. And Manwood Chief Baron, and Periam Justice, to whom a Cafe depending in the Chancery was referred concerning the dicharge of Cithes by unity of possession, delivered their opinions, Chat such an Unity is not any discharge within the said Statute. It was adjorned.

Mich. 32 Eliz. In the Kings Bench.

CCCCLXVIII. Hoskins and Stupers Cafe.

Man Action upon the Cale, the Plaintiff declared, That whereas the Assumption Plaintiff had fold to the Defendant 1000 couple of Mewland Fishes to the use of the Defendant, and in consideration that he should thip, and fould bying and carry the adventure of them from Briftol, in portum of Saint Lucar and should carry back again the value of the sain fish to London of Bristoll secundum usum Mercatorum, The Defendant oid promise, that upon the arrival of the laid fifth, in portum of St. Lucar, he would give to the Plaintiff 112 Land laid, that he arrived with the laid fifth, ad portum of St. Lucar, anothat afterwards he attived with goods of the value of the law fish, ad portum of London, secundum usum Mercatorum. It was holden by all the Judges, that in portum, and ad portum is all one, expassion of as the Statute of Mask is, Quod vicecomes accedat ad locum valuatum, yet words he ought to enter into the Land: So the Mask of accedas ad Curiam, & in plena Curia recordari facias, &c. Another Exception was, because he declated, That he returned with goods to the value, and doth not say, whose goods they were, but the Exception was not allowed, for these words secundum usum mercatorum imply that they were the good of the Defendant, Quod fuit concessium per Curiam, and afterwards Judgment was given for the Plaintiff.

Trin. 32 Eliz. In the Kings Bench.

CCCCLXIX. Walgrave and Agurs Case.

Sir William Walgrave hought an Action upon the Cafe against Agur up- Action for In these words spoken by the Defendant to a servant of the Plaintist, scandalous is well known, that I am a true subject, but thou (innuendo the said words. servant) servest no true subject, and there own conscience may accuse 1 Cro.191. thee thereof. It was moved in arrest of Judgment, That these words are not actionable, so no slander comes to the Plaintist thereby, so pechaps the Party served no man, but the Queen, and if

Sawage and Cooks Cafe. the words may receive fuch lenke, which is no pregnant proof of infamp, they are not actionable, as in the Cake betweet Savage and Cook, These words, Chou art not the Queens friend, are not actionable, for it might be they were spoken in respect of some opinary misdemeanours, as in not payment of Subidies, of the like: Alloit is not aver, red, that the party to whom the words were spoken, was the Plaintiss servant. Coke, Wihere a manis touched in the duty of his Office, of in the rourse of like, an action lieth, although that otherwise the words are not actionable, and here is set forthin the Declaration, That the Plain. tiffat the time of the speaking of the laid words, was a Justice of Peace, and Sheriff of Suffolk, and Captain of a Croop of 120 boile to attend the Preferbation of the Queens person: So in respect of place and bignity in the Common wealth, as 2H.8. The Sishop of Winchester brought an action upon the Statute of Scandal. Magnatum, upon these words, Sy Lord of Winchester sent for me, and imprisoned me, until I made a he lease to J. S. and in respect of his Place and Dignity the words were teale to J. S. and in respect of his Place and Dignity the words were holden actionable: and 9 Eliz. Dyer, In an action upon the Cale by the Log Adurgavency against Wheeler, My Log of Adurgavency sent for us, and put forme of us into the Coal-house, and some into the Stocks, and me into a place in his house called Little Case, and the words were holden actionable: So in our Case, Lewes said, It was the Case of one Kinsey; one said to a Bailist of a Franchise, Thou didst execute sake that cants, without saying, they were fallisted by him, adjudged an Action of not lie. Wray Chief Junice, These words in themselves are not actionable, for the Plaintist might be untrue in small things, which gave no discredit, but the quantity of the person of whom they were spoken, may add weight to them, as to call one Bankrupt generally, no actions may add weight to them, as to call one Bankrupt generally, no action lieth uponit, but to call a Herchant lo is actionable. So to call ofe Papist, no action lieth for it; But if one call the Actibishop of Cantellary so, an action will lie, so, he is Governour of the Church. Thou art an untrue man to the Queen, gives hot an action to an ordinary Subject, but luch words looken of one of the Privy Council, are actionable. Corrupt man, in themselves are not actionable, but being woken of a Judge, an action lieth. It was Birchleys Case, an Attorney of this Court, Chou art a corrupt man, and beatest corruptly, and it was abjudged per Curiam, that the words were actionable, for that refers to his calling. Gawdy was of opinion, that the words were actionable of themselves, without respect had to the Duality of the person of whom they were spoken, for the words are particular enough; and to church him in the butp of a Subject, which is to be faithful to his natural Prince, is a great Reproach and Slander. Fenner conceived, that the words were not actionable. Wray, as before, Of themselves they are not actionable, for they are in general, for if he be indiced of Creipals, he is not a god

Kinseys Case.

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